

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ALEJANDRO ARROYO
Claimant

APPEAL NO. 11A-UI-15309-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 02/27/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 22, 2011, reference 02, that denied unemployment insurance benefits. After due notice, a telephone conference hearing was held on January 5, , 2012. The claimant participated personally. The employer participated by Ms. Nikki Bruno, Ms. Kathy Truelson and Mr. Bo Boecker. The official interpreter was Mr. Ike Rocha.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Alejandro Arroyo was employed by West Liberty Foods LLC from March 8, 2011 until November 7, 2011 when he was discharged for fighting on the job. Mr. Arroyo was employed as a full-time production worker and was paid by the hour.

The claimant was discharged when he violated a strict company rule which prohibited fighting or threats of violence to other employees. Mr. Arroyo was aware of the policy and was aware that he could be discharged if he violated it. The claimant was discharged following an incident in which Mr. Arroyo made physical contact with another employee in an aggressive manner because the other employee was making inappropriate statements. Although Mr. Arroyo had the opportunity to inform his supervisor or the shift superintendent he did not do so. Mr. Arroyo was aware that the supervisor did not speak Spanish and that the supervisor was not aware of the comments being made to Mr. Arroyo. Both the claimant and the other employee were discharged for violating the company's rule against fighting or physical contact.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence establishes that the claimant and another employee were discharged when they violated the company's rule that prohibited fighting or physical contact between employees in an aggressive manner. Mr. Arroyo was aware of the rule and reasonable alternatives were available to the claimant. The administrative law judge thus concludes that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated November 22, 2011, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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