

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA REAMS
Claimant

APPEAL NO. 08A-UI-02406-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 07/01/07 R: 02
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Lisa Reams (claimant) appealed an unemployment insurance decision dated March 3, 2008, reference 03, which held that she was not eligible for unemployment insurance benefits because she was discharged from Winnebago Industries (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2008. The claimant participated in the hearing. The employer participated through Dee Pearce, Human Resources Supervisor and Michael Prehn, Production Supervisor. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from January 4, 2002 through February 8, 2008 when she was discharged for fighting on the job. The employer has a zero tolerance fighting policy and the claimant was aware of that policy. She received a written warning on April 10, 2007 for not getting along with co-employee Chuck Stewart. The claimant was blowing her air blower at her co-worker's area. The warning reports that the claimant has had prior incidents of not getting along with her co-workers and needs to find ways to communicate so no further problems occur. On February 4, 2008, the production supervisor was called to the claimant's work area as it had been reported she was fighting with a co-employee. When the supervisor arrived, the claimant and co-worker Lisa Marion were on the ground with their legs and arms wrapped around each other. The supervisor saw each employee had the other employee's hair in their hands. They were pulled apart and the claimant was suspended for three days pending further investigation. The employer learned that the incident began as a result of the claimant using her air blower to the other employee's area and Ms. Marion responded in kind. The claimant contends she was defending herself and was trapped in a corner but the supervisor confirmed this not to be the case as the women were

out in the open when he found them. The claimant did admit that she had taken “hold of the back” of her co-employee’s “head” and was trying to hold down the other employee.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for fighting on the job. She admits she was fighting but contends she was defending herself. In order to establish the claimant acted out of self-defense, she would need to show freedom from fault, a necessity to fight back and an attempt to retreat. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). The evidence confirms the claimant began the altercation and could have left the area when she went to use the phone to call the supervisor, but chose not to do so. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer.

Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated March 3, 2008, reference 03, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css