

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TOAN QUACH
Claimant

OWEN INDUSTRIES INC
MISSOURI VALLEY STEEL CO
Employer

APPEAL NO. 14A-UI-11669-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/19/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Toan Quach (claimant) appealed an unemployment insurance decision dated November 4, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Missouri Valley Steel Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 3, 2014. The claimant participated in the hearing. Phung Nguyen interpreted on behalf of the claimant. The employer participated through Mike Jordan, Shop Foreman; Larry Minter, Plant Manager; and Sheila Gerke, Human Resources and Safety Director. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

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

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 welder from January 3, 2011, through October 17, 2014, when he was discharged for fighting on the job on October 10, 2014. The employer has a zero tolerance workplace violence policy and the investigation of the witnesses confirmed the fight started after the claimant first pushed his co-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 him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on October 17, 2014, for fighting since he was the initial aggressor. He admitted he pushed his co-employee first before the co-employee hit him.

The employer has an interest and duty in protecting the safety of all of its employees. The claimant's physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of the employer and the safety of its employees and is disqualifying misconduct even without a prior warning. Benefits are denied.

DECISION:

The unemployment insurance decision dated November 4, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs