

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARMANDO G MATA**

Claimant

**APPEAL NO: 12A-UI-12952-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 09/30/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Armando G. Mata (claimant) appealed a representative's October 19, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from West Liberty Foods, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2013. The claimant participated in the hearing. Nikki Bruno appeared on the employer's behalf. One other witness, Rick Smith, was available on behalf of the employer but did not testify. Ninsa Redmond served as interpreter. 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:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on August 12, 2008. He worked full time as a production general laborer at the employer's West Liberty, Iowa meat processing facility. His last day of work was September 26, 2012. The employer discharged him on September 27, 2012. The stated reason for the discharge was fighting with another employee.

On the morning of September 26 the claimant had what started as a verbal argument with another employee, in which both employees were exchanging insults. The other employee approached the claimant, and the claimant pushed him. Others intervened, but the matter was reported to higher supervisors. The employer then discharged the claimant for violating its policy against physical contact or fighting.

## **REASONING AND CONCLUSIONS OF LAW:**

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Fighting at work can be misconduct. *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995). Fighting will be disqualifying misconduct unless the claimant shows 1) a failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) that he attempted to retreat if reasonable possible. *Savage*, supra. The claimant's involvement in the fight does not meet these criteria; his engaging in the fight with the coworker 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

## **DECISION:**

The representative's October 19, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of September 26, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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