

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLY J EICHER
Claimant

APPEAL NO: 11A-UI-16140-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICOLD LOGISTICS LLC
Employer

OC: 11/20/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Billy J. Eicher (claimant) appealed a representative's December 12, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Americold Logistics, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 10, 2011. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 15, 2008. He worked full-time as a general laborer/fork lift driver on the second shift in the employer's Bettendorf, Iowa facility. His last day of work was the shift that went from the afternoon of November 15 into the morning of November 16, 2011. The employer suspended him on that date and discharged him on November 21, 2011. The reason asserted for the discharge was fighting at work.

Another employee had been making disparaging comments toward the claimant, which the claimant had reported to his supervisor. Later that day, this other employee again began making negative and threatening comments about the claimant. At the end of a break, as the work team prepared to return to work, this other employee made some indistinct comment to the claimant. The claimant asked the coworker what he had said. The coworker turned around and came back about six feet to get in the claimant's face. The claimant felt threatened and pushed

the coworker back with his hands to create some space for him to move away. The coworker then charged at the claimant with a balled fist, but was intercepted by two other employees. The claimant reported the incident to his supervisor. As a result of the incident, the employer discharged the claimant.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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 that 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 that 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).

The reason cited by the employer for discharging the claimant is fighting at work. Fighting at work can be misconduct. *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995). Fighting will not be disqualifying misconduct if the claimant shows: 1) a failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) an attempt to retreat if reasonable possible. *Savage*, supra. Under the circumstances of this case, the claimant's actions were self-defensive and not due to his own fault in bringing on the situation. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 12, 2011 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw