

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYSON T WATT
Claimant

APPEAL NO. 13A-UI-00647-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASPLUNDH TREE EXPERT CO
Employer

**OC: 12/16/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 11, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on February 19, 2013. Claimant participated. The employer participated by Mr. Jason Davis, General Foreman.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Tyson Watt was employed by Asplundh Tree Expert Co. from September 2011 until December 16, 2012 when he was discharged from employment. Mr. Watt was employed as a full-time tree trimmer and was paid by the hour.

Mr. Watt was discharged after he was involved in a physical altercation with another worker on or about December 16, 2012. The claimant and the other worker were having a dispute about the wives/girlfriends residing in a common hotel room shared by Mr. Watt and the other worker. Mr. Watt was aware that the other worker was upset and a short physical confrontation ensued when Mr. Watt placed his hands on the other worker. Mr. Watt was aware that the other worker was upset and exacerbated the situation by placing his hands on the other worker. Both Mr. Watt and the other worker were discharged for violating the company policy which prohibits fighting or threatening behavior.

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. of Appeals 1992).

The evidence in the record establishes that the claimant was aware that the other worker was upset and that the claimant exacerbated the situation by placing his hands on the other worker leading to a physical confrontation. The administrative law judge concludes that the claimant knew or should have known that conducting himself in that manner would escalate the situation between the parties and violate the company's policy which prohibits fighting or threatening behavior. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated January 11, 2013, reference 01, is affirmed. 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

pjs/pjs