

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 05A-UI-05125-H2T  
OC: 04-03-05 R: 03  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**STATE CLEARLY**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 6, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 28, 2005. The claimant did participate and was represented by David P. Odekirk, Attorney at Law. The employer did participate through Gary Kinkade, Area Manager and Julie Dubois, Janitor, and was represented by Joseph McDonnell of Personnel Planners. Claimant's Exhibit A was received.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a unit manager for PEC Waterloo full time beginning April 29, 2000 through April 6, 2005, when he was discharged for fighting in the workplace with Larry Miller on April 1, 2005. On April 1, the claimant called Mr. Miller on the radio to tell him to send

Jeff Kubic to the office so that he could talk about a parking issue with him. The claimant never asked Mr. Miller to come to the office. Mr. Miller invited himself into a meeting that did not concern him. On the way to the office Mr. Miller and Mr. Kubic stopped at the security desk and had a security office go with them. When they arrived at the claimant's office it was Mr. Miller who shut the door in the security guard's face and did not allow him to enter the claimant's office. Mr. Miller and Mr. Kubic entered the claimant's office. The office is very small, with no windows and the door automatically locks when it closes. The claimant had known Mr. Miller for over twenty years and knew that Mr. Miller had a history of engaging in bar fights and beating people up. The claimant knew that Mr. Miller had a propensity for fighting.

When Mr. Miller entered the office he began shaking his finger in the claimant's face. The claimant then told Mr. Miller that he was the supervisor and not to shake his finger in his face. The claimant said nothing to Mr. Miller to provoke a fight. Telling a subordinate employee not to shake his finger in your face is appropriate conduct for a supervisor. Neither the employer nor the claimant denies that it was Mr. Miller who threw the first punch at the claimant and attacked him. Mr. Miller instigated the assault on the claimant. It is also clear that the claimant was stuck in a small office with no way to flee the assault from Mr. Miller. After Mr. Miller began hitting him, the claimant was pressed up against a wall with no way out of the office except past the aggressor. The claimant defended himself by hitting back at Mr. Miller two times and tripping him to get him to the floor. The claimant threw two punches at Mr. Miller and tripped him before the security guard entered the room and got between them. Mr. Miller tried to attack the claimant again even after the security guard entered the room. Mr. Kubic did not testify at the hearing.

Ms. Dubois only saw inside the office after the security guard opened the door. Mr. Miller is like a grandfather to Ms. Dubois, as he is a very close friend to her family.

According to Mr. Kinkade, under the employer's no violence in the workplace policy it does not make a difference whether the person is defending himself or instigates the fight; anyone who throws a punch is discharged. Under the employer's policy, employees are not allowed to defend themselves physically or they will be discharged.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

To establish a self defense argument the claimant must show (1) freedom from fault in brining on the difficulty, (2) a necessity to fight back, and (3) attempt to retreat unless there is no means of escape or that peril would increase by doing so. Savage v EAB, 529 N.W.2d 640 (Iowa App. 1995).

Here the claimant has established a valid self defense argument. An employer's policy on work place violence is not dispositive on the issue of whether unemployment insurance benefits should be awarded. The claimant had no place he could retreat to escape the admitted assault from Mr. Miller. The claimant knew well Mr. Miller's long history of bar fighting and it was reasonable for him to defend himself knowing Mr. Miller's history of hurting people. An employer cannot reasonably expect employees to endure assaults without even attempting to defend themselves. The administrative law judge is not persuaded that the claimant ever became the aggressor in the fight. It is clear that the testimony of Ms. Dubois favors Mr. Miller because he is an old family friend. The administrative law judge is persuaded that the claimant did not instigate the conflict either physically or verbally and that he had to defend himself given Mr. Miller's history of bar fights, which was known to him. Also, it's clear the claimant had no way to escape, there was no way for him to retreat. Security was standing outside the office and they were not able to stop Mr. Miller from assaulting the claimant. It was Mr. Miller who brought security to the meeting to begin with, not the claimant. The employer has failed to establish misconduct on the part of the claimant. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 6, 2005, reference 02, decision is reversed. The claimant was discharged from employment for reasons not related to job misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjw