

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IBRAHIM Y AHMED
Claimant

APPEAL NO: 14A-UI-02816-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 02/09/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wells Enterprises, Inc. (employer) appealed a representative's March 3, 2014 decision (reference 01) that concluded Ibrahim Y. Ahmed (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2014. The claimant participated in the hearing. Connie Hickerson of Equifax/TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Justin Dodge. 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 allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 15, 2012. He worked full time as a freezer track specialist on the evening shift at the employer's Le Mars, Iowa logistics facility. His last day of work was February 10, 2014. The employer discharged him on February 11, 2014. The reason asserted for the discharge was a physical altercation with a co-worker.

The claimant had been having difficulties with a co-worker. On February 10, just after the shift started at 7:55 p.m., the claimant was in the heat room near the break room and found that his gear had been thrown into the trash can. He approached this co-worker who was sitting down and accused him of throwing them into the trash. The co-worker arose and stepped towards the claimant. He reached out and touched the claimant's face. The claimant believed he was about to be struck, and did punch the co-worker. This was later reported to a supervisor. The claimant acknowledged that he had punched the co-worker and did indicate that the co-worker

had lied to him about throwing the gear in the trash, but also asserted that when the co-worker touched him he was about to be hit. Police were called and the claimant was arrested and charged with disorderly conduct. On February 11 the employer discharged the claimant for the incident.

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 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). However, a discharge for 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) he attempted to retreat if reasonable possible. *Savage*, supra. The claimant indicated that the incident was brought on by the co-worker throwing his gear in the trash and that the co-worker made the first physical contact so that he reasonably believed that he was about to be struck and was defending himself when he punched the co-worker. The employer relies exclusively on the second-hand account from the co-worker and a possible observer; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those persons might have been mistaken, whether the observer actually did observe, whether either of them are credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the reports. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact punched the co-worker without provocation and not in response to a perceived threat of being struck himself. 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 March 3, 2014 decision (reference 01) is affirmed. 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

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