

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VIDETTE L CRAIGHEAD
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 15A-UI-09769-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 15, 2015. Claimant participated. Employer participated through human resource clerk, Kristi Fox. The employer's exhibits were not included in the record

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a second shift production worker from March 17, 2014, and was separated from employment on August 6, 2015, when she was discharged. Her last day of work was August 3, 2015. On that date she was involved in an altercation with team member Hawa Sayiah about a dispute over the work process. Claimant, Sayiah and Mack Harkrider wrote statements. Sayiah hit claimant in the chest with a piece of meat earlier in the employment and on August 3 attempted to pull claimant from the stand she was working from. For part of the physical encounter, claimant was not in a position where she could retreat, but at the point where she was on top of Sayiah who was on the floor, claimant did not attempt to leave. Instead, she said, "I stood up and balled up my fists again." Claimant recounted her injuries as bruises on her legs and fingers. Sayiah had bruising and swelling to her face and head.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

While the employer did not present Harkrider to provide sworn testimony or submit to cross-examination, claimant's testimony that she "stood up" over Sayiah and "balled my fists again" and she had bruises only on her legs and fingers while Sayiah had bruising and swelling on her face and head, indicates the employer's evidence is credible.

Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

Employers generally have an interest in protecting the safety of all of its employees. Claimant's own testimony indicated a clear intent to participate in the activity rather than retreat when it was possible. The ALJ is cognizant of the claimant's frustration at the employer's failure to address the earlier incident with Sayiah; however, claimant's behavior was contrary to the best interests of employer and the safety of its employees, and is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The August 20, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as she works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs