

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS J FUCALORO
Claimant

APPEAL NO. 13A-UI-10064-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 08/04/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 27, 2013, reference 01, that concluded he was discharged for work-connected misconduct. An in-person hearing was held on October 9, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Jim Funcheon participated in the hearing on behalf of the employer with a witness, Tom Barragan. Exhibits One (Work Rules) and Two (Video) were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production employee from January 2008, to August 7, 2013. He was informed and understood that under the employer's work rules, fighting was prohibited and would result in summary discharge, employees were required to show mutual respect to employees, and threatening language or conduct was not tolerated.

On August 2, 2013, the claimant got involved in a heated argument with a coworker, Ben Wilson. The claimant had tossed a piece of hard plastic on a pallet where Wilson was sitting. It accidentally hit Wilson's arm. The claimant said he was sorry, but Wilson got angry and threatened to beat the claimant up after work. The claimant grabbed the piece of plastic and forcefully hurled it away from the pallet. The claimant then quickly approached Wilson who started pointing his finger toward the claimant's face. The claimant pushed Wilson's finger away and shoved Wilson. They stood face to face arguing, and when Wilson started pointing toward the claimant's face again, the claimant grabbed Wilson's finger. The claimant walked a short distance away, and the two men continued to argue. The claimant again approached Wilson and grabbed his finger again. At that point, they separated and walked away. The claimant could have avoided having a physical confrontation with Wilson by not approaching him, backing away when Wilson started jabbing his finger at the claimant, and not grabbing Wilson's finger.

Wilson's finger was injured when the claimant grabbed it. He was sent by health services for x-rays and it was determined that he had a fractured finger.

The claimant was sent home on August 2 pending an investigation that included viewing surveillance video and interviewing the claimant and Wilson. The claimant was discharged on August 7 for fighting, failing to show mutual respect, and threatening conduct in violation of the employer's rules. Wilson was not discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The unemployment law recognizes that a person may use reasonable force to protect himself or herself from bodily harm, but the person has a duty to retreat if that is possible. *Savage v. EAB*, 529 N.W.2d 640, 642 (Iowa App. 1995). In this case, the claimant aggressively went toward Wilson after Wilson threatened to beat him up after work. The claimant shoved Wilson after Wilson started pointing his finger at the claimant. Whether Wilson's finger did or did not touch the claimant's nose does not really make a difference here. Even if Wilson's finger touched the claimant's nose, the claimant had an easy option of just moving back to avoid being so close to him. He did not have to grab Wilson's finger to protect himself from harm. Finally, the fact that the employer did not discharge Wilson as well does not mean the claimant did not commit disqualifying misconduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 27, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs