

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDRES M DEMOTA
Claimant

APPEAL NO. 10A-UI-17059-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/31/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 13, 2010, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on January 25, 2011. Claimant participated personally. The employer participated by Mr. Jim Hook, Human Resource Manager. The official interpreter was Steven Rhodes.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Andreas DeMota was employed Tyson Fresh Meats Inc. from May 26, 2009 until November 4, 2010 when he was discharged for fighting on the job. Mr. DeMota worked as a full-time production worker and was paid by the hour.

The claimant was discharged because of an incident that took place on November 2, 2010. On that date Mr. DeMota was struck by another employee who used a piece of contaminated meat to strike the claimant. Mr. DeMota did not respond at the time. Subsequently the other employee began to shove Mr. DeMota and struck the claimant. After being struck, Mr. DeMota responded by attempting to defend himself. A witness who observed only a portion of the altercation reported to the company that he did not see the other employee strike Mr. DeMota. Mr. DeMota was discharged from employment. The other employee involved in the altercation was placed on probation based upon the employer's belief that Mr. DeMota had been the aggressor in the altercation.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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. App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this case Mr. DeMota appeared personally and testified under oath denying that he was the aggressor in the confrontation between himself and another worker on November 2, 2010. The claimant testified that he was struck by the other worker with a contaminated piece of meat and that subsequently the other worker resumed the altercation by pushing and striking Mr. DeMota. The claimant further testified that he only acted in self-defense after he was struck by the other employee and that there were no supervisory personnel in the area to assist the claimant or stop the altercation. In contrast the employer relied upon hearsay evidence in support of its position. While hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds the claimant's testimony to be credible and finds that his testimony is not inherently improbable.

While the decision to terminate Mr. DeMota may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish intentional disqualifying misconduct. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 13, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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