

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN M SARCENO
Claimant

APPEAL NO. 13A-UI-06500-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXEL INC
Employer

OC: 05/05/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 22, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 9, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of with the assistance of an interpreter, Ike Rocha. Jim Lydic participated in the hearing on behalf of the employer with a witnesses, Jose Vargas and Maria Balles. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a forklift operator for the employer from August 10, 2012, to May 3, 2013. He was informed and understood that under the employer's work rules, threatening or inflicting bodily harm on a coworker was grounds for discharge. The claimant had received warnings on September 11, 2012 (unsatisfactory work performance) and December 27, 2012 (hit a pallet wrapper with his forklift).

On May 2, 2013, another employer complained to a supervisor that the claimant of pushing him in the parking lot and provoking him to fight. In fact, the employer had verbally insulted the claimant earlier in the day and pushed him in the stairway. The claimant asked the employee in the parking lot why he was treating the claimant so badly, but the claimant did not push the employee or provoke him to fight.

The employer discharged the claimant on May 3, 2013, for violating the work rule against threatening and inflicting bodily harm to a coworker and having two prior warnings.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant was credible and consistent in his testimony. The employer offered secondhand evidence from persons who were not present at the hearing, were not under oath, or subject to cross-examination.

No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 22, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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