

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J HILEMAN
Claimant

APPEAL NO: 07A-UI-02589-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVER RAFTING INC
Employer

**OC: 01/21/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Matthew J. Hileman appealed a representative's March 8, 2007 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from River Rafting, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2007. The claimant participated in the hearing and was represented by Richard Bell, attorney at law. Sally Johnson appeared on the employer's behalf and presented testimony from one other witness, Melody Yaley. 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?

FINDINGS OF FACT:

After a prior period of employment with the employer and with other companies affiliated with the employer, the claimant most recently started working for the employer on October 16, 2006. He worked full time as a loader/operator on the employer's barge moving logs on the Mississippi River. His last day of work was January 19, 2007. The employer discharged him on that date. The stated reason for the discharge was having an altercation with another employee.

The claimant worked on the barge with a coworker. The claimant had been injured while working with this coworker on December 7, 2006 when a log fell on the claimant from a crane being operated by the coworker. The claimant had previously acknowledged that his failure to advise the coworker as to his location as required had at least contributed to the accident.

On January 18 the claimant and the coworker had completed their regular work duties for the day and had gone to the hotel at which they stayed at the employer's expense during the week while working on the barge. As they were walking down a hallway, the two had a verbal exchange. The coworker then made a comment to the effect that on December 7 he had dropped the log on the claimant on purpose. The coworker kept walking, but the claimant

became very angry and grabbed the coworker at least a couple times, purportedly to get him to turn around to talk. The claimant yelled further at the coworker, and the coworker told the -- hand, the employer provided some information that a clerk at the hotel had witnessed the events, including that the coworker then sought to get a room separately for the claimant, but the claimant refused. The claimant went out to the truck in which they had gotten to the hotel and waited for employees of the logging business with whom they also worked to arrive; when they arrived, the claimant stayed in a room with them.

The coworker reported the matter to the employer immediately; the claimant was given a message not to work on the barge on January 19, but was to return to the employer's offices. He did not return immediately, but waited to come back with some of the crew from the logging business. When he arrived, the claimant spoke with Ms. Johnson and with the owner of the business. During that conversation the claimant admitted "shoving" the coworker at least a couple times. As a result of concluding that the claimant had acted violently toward the coworker, the employer discharged the claimant.

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); Iowa Code § 96.5-2-a.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

The administrative law judge finds the employer’s testimony as to what the claimant admitted on January 19, 2007 to be more credible than the claimant’s current denial. Violent physical conduct or fighting 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) failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) attempts to retreat if reasonable possible. Savage, supra. While assuming the coworker did in fact make a statement that he had dropped the log on the claimant on purpose, while this would not make the claimant entirely at fault for bringing on the problem, the coworker did not initiate or even respond in kind to the physical conduct, and there was no “necessity” for the claimant to answer with physical force. The fact that it was a “shove” and not a punch also does not change this conclusion.

The claimant further asserts that the incident should not serve to disqualify him because it should not be considered “work-connected” as it was not while the claimant was “on the clock” or performing his regular duties. However, in this case there is a sufficient nexus between the employment and the time and place of the incident, as well as the reason for the incident itself, to constitute it being “work-connected.” But for the employment, the claimant would not have been at the hotel at that day and time to stay in a room to be paid for by the employer during the time the claimant was away from home due to the job.

The claimant's physical aggression toward the coworker shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 8, 2007 decision (reference 03) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 19, 2007. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs