

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABOT JOHNSON**

Claimant

**APPEAL NO. 11A-UI-03364-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**

Employer

**OC: 02/13/11**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Abot Johnson (claimant) appealed an unemployment insurance decision dated March 16, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Farmland Foods, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2011. The claimant participated in the hearing. The employer participated through Jessica Garcia, human resources assistant manager. Employer's Exhibits One through Four were admitted into evidence. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from May 5, 2010 through February 14, 2011. On February 3, 2011, the employer moved six employees with the lowest seniority to the cut floor for one day. The claimant was one of the six but refused to go. He said that he was sick and the cold would not be good for him. The claimant also argued that he was not one of the lowest seniority. Seniority is determined by the date of hire and not the date when the employee came to the department or date qualified. When there are two or more employees with the same seniority date, the employer then determines seniority by following the alphabet.

The employer gave him the option of going home sick, but he refused because he said he had too many attendance points. The employer witness testified the claimant did not have too many attendance points at that time. The union steward was called and the employer explained to the claimant that he had to go to the cut floor or he had the option of going home sick. Failure to do either one of these would result in an indefinite suspension. The claimant refused and he was

suspended indefinitely for insubordination. He then refused to sign the indefinite suspension notice.

The employer brought the claimant back to work on February 14, 2011 to sign a return to work agreement so he could return to work. The agreement documented that this was the claimant's final warning for insubordination, that all time lost was considered suspension with loss of earnings and that any future similar incident would result in termination. The claimant refused to sign the return to work agreement and was escorted out of the building. The employer sent him a termination letter on February 15, 2011.

## **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for insubordination on February 14, 2011. He refused to move to the cut floor on February 3, 2011, refused to sign the

suspension document on that date and then refused to sign the return to work agreement on February 14, 2011. Regardless of whether the claimant thought he was not one of the six with the lowest seniority, the employer gave him a directive and he was obligated to follow it unless he went home ill. The claimant's conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated March 16, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw