

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLE D ZUNKEL
Claimant

APPEAL NO. 09A-UI-08030-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 04/26/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gayle Zunkel (claimant) appealed a representative's May 22, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Fareway Stores (employer) for fighting on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 17, 2009. The claimant was represented by Kristine Zunkel, the claimant's wife, and participated personally. The employer was represented by Garrett Piklapp, General Counsel, and participated by Wesley Bass, Warehouse Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 30, 2000, as a full-time order picker. The claimant signed for receipt of the employer's handbook on August 28, 2006. The employer issued the claimant a written warning on October 17, 2005, for discourteous treatment to a fellow employee. On June 15, 2008, the employer issued the claimant a verbal warning for having a verbal exchange with a co-worker.

On April 14, 2009, the claimant was in the aisle when a co-worker pulled around the corner and blocked him. The two had a verbal argument about the situation. The claimant reached up and touched his fingers to the co-worker's chest. The co-worker felt the claimant push him. The claimant knew it was wrong and immediately retreated. The employer terminated the claimant on April 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). "[A]n employer has the right to expect decency and civility from its employees." Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by touching a co-worker in anger. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 22, 2009 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css