

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARKO A MAKUR
Claimant

APPEAL NO. 09A-UI-19109-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

**Original Claim: 11/22/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Marko A. Makur filed a timely appeal from an unemployment insurance decision dated December 17, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 29, 2010, with Mr. Makur participating. Human Resources Manager Becky Jacobson and Cut Floor Supervisor Bob Starman participated for the employer, Farmland Foods, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marko A. Makur was employed as a production worker by Farmland Foods, Inc. from April 28, 2008, until he was suspended November 10, 2009, and ultimately discharged November 24, 2009. The incident leading to discharge had occurred on November 9, 2009. Mr. Makur shoved a coworker, Jorge Servantes, in the locker room. This followed an incident in which Mr. Servantes had thrown a piece of meat. Mr. Makur believed that the meat had been thrown at him personally. Mr. Makur confronted and shoved Mr. Servantes. The employer has a rule providing that incidents such as this result in immediate termination.

During the investigation of the incident, Mr. Makur was interviewed by Human Resources Manager Becky Jacobson and Cut Floor Supervisor Bob Starman. During the interview, Mr. Makur stated that he shoved Mr. Servantes, who then walked away. Mr. Servantes' statement was consistent with Mr. Makur's.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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 crucial fact in this case is whether Mr. Makur was acting offensively or defensively when he shoved Mr. Servantes. During the hearing, Mr. Makur stated that he shoved Mr. Servantes only because Mr. Servantes approached him in a threatening manner. The two employer witnesses, people who interviewed both Mr. Makur and Mr. Servantes, testified that during the investigation, Mr. Makur did not indicate that he was acting defensively. The administrative law judge finds the testimony of these two witnesses of a conversation occurring shortly after the incident is more credible than the claimant's statements made two and one-half months later. The administrative law judge concludes that Mr. Makur initiated the physical contact and in so doing violated the employer's policy. Benefits are withheld.

DECISION:

The unemployment insurance decision dated December 17, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw