

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA G GARCIA**  
Claimant

**APPEAL NO: 12A-UI-13538-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 10/21/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jessica G. Garcia (claimant) appealed a representative's November 6, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Farmland Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 12, 2012. The claimant participated in the hearing and was represented by Jennifer Zupp, attorney at law. Amber Rogers, attorney at law, appeared on the employer's behalf and presented testimony from one witness, Becky Jacobsen. During the hearing, Claimant's Exhibit A and Employer's Exhibits One, Two, and Three were entered 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:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on March 30, 2009. She worked full time as an assistant human resources manager at the employer's Denison, Iowa facility. His last day of work was October 16, 2012. The employer discharged her on October 16, 2012. The stated reason for the discharge was having a romantic relationship prohibited under the employer's policies.

The employer's policy "forbids romantic relationships between any level of supervisor/manager and a subordinate over whom the supervisor/manager has any direct or indirect reporting or supervising relationship. In the past, rumors had linked the claimant with a particular production supervisor; Jacobsen, the human resources manager, had previously expressed concern to the claimant about these rumors, to which the claimant responded that they were "only friends."

The production supervisor was then off work from sometime in June 2012 due to personal illness. The employer considered the plant supervisor to have at least an indirect reporting relationship with the claimant because of her position in human resources, which would include oversight of persons on leave.

From about the end of June through about the end of August the claimant occasionally engaged in a sexual relationship with the plant supervisor who was on leave. On October 8 she reported to Jacobsen that she was pregnant, and reported that the plant manager was the father. Jacobsen then discussed this with higher management, and on October 16 Jacobsen and another manager met with the claimant and informed her that she was being discharged for violation of the policy. The claimant asserted that she had informed this other manager in about the early July time frame that she was having a physical relationship with the production supervisor; however, during the meeting on October 16 the claimant did not raise this issue.

### **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.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant asserts that her relationship with the production supervisor was not covered by the employer's policy as he was not a subordinate to her position. The policy also does include situations of indirect reporting or supervision; further, if there had been any doubt, the fact that Jacobsen had previously indicated to the claimant that there would be a problem if there had been a relationship should have resolved any ambiguity on the claimant's part. She also asserts that she had provided the employer's manager with notice of the relationship many months before the discharge, so that the discharge in October could not be for a "current act." The administrative law judge does not find the claimant's assertion that she had provided this prior notice to be credible; a reasonable person would have raised that issue with the manager at the time the claimant was being discharged in the presence of that manager on October 16.

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has established by a preponderance of the evidence that the claimant had a prohibited relationship with the production supervisor; this 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 November 6, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 16, 2012. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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