

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ISAAC N DIANY
Claimant

APPEAL NO: 12A-UI-00543-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 12/11/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 11, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. Telephone hearings were held on February 13 and March 7, 2012. The claimant participated in the hearings. Becky Jacobsen, the human resource manager, appeared on the employer's behalf. Pal Reth interpreted both hearings. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons consisting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2010. He worked as a full-time employee in production. The employer's written policy informs employees throwing meat at other employees is considered a safety violation and is behavior that is not tolerated by the employer.

On December 3, 2011, the claimant reported to his supervisor two times that a co-worker; V., was throwing meat at him that hit him. There were problems a few days earlier. The claimant does not know if his supervisor talked to V. after he reported problems with her on December 3, 2011. The claimant put on protective equipment, that employees use when cutting, in an attempt to protect himself because V. continued to throw meat at him. When V. did not stop throwing meat at him, he asked her why she threw meat at him. After V. threw a piece of meat that hit his hands, the claimant threw a piece of meat at her table. V. then threw a piece of meat at the claimant that hit him in the face. The two then started exchanging words.

Another supervisor then came and stopped the confrontation between the claimant and V. The claimant was suspended on December 3. The employer investigated the incident by talking to co-workers. The employer concluded the claimant violated the employer's safety rules by engaging in conduct that could be physically dangerous to other employees. The employer also

concluded the claimant could have reported V.'s conduct to a supervisor and did not do this again. On December 9, 2011, the employer discharged the claimant for violating a safety rule. Even though the claimant's job was not in jeopardy before December 3, 2011, the employer has zero tolerance for this kind of behavior.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes that based on interviews the employer conducted with the claimant, V. and co-workers, the employer had justifiable business reasons for discharging the claimant. Since the employer relied on reports from employees who did not testify at the hearing, the claimant's testimony about the December 3 incident must be given more weight than the employer's reliance on hearsay information or reports from employees who did not testify at the hearing. The claimant's testimony was considered credible. Therefore, the findings of fact reflect his version of the events.

On December 3, the claimant used poor judgment when he asked V. why she was throwing meat at him and threw a piece of meat at her table. The claimant was upset when V. continued throwing meat at him even after he had already asked his supervisor two times to get V. to stop throwing meat at him. Even if a supervisor gave V. a white tub to put meat into, she continued throwing meat at the claimant. Based on the evidence presented at the hearing, the claimant threw a piece of meat at V.'s table in an attempt to get her to stop throwing meat at him. The claimant exercised poor judgment when he did this. V. became more upset and threw another piece of meat at the claimant's face which hit him in the eye.

The evidence indicates the employer had problems with V. before December 3. When the claimant's supervisor did not take appropriate steps the second time the claimant complained about V. throwing meat at him on December 3, the claimant's subsequent conduct does not rise to the level of work-connected misconduct. Yes, he became angry at V. for throwing meat at him and used poor judgment, but he did not commit work-connected misconduct. As of December 11, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's January 11, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 11, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs