

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEXTER BAYLARK
Claimant

APPEAL NO: 10A-UI-01626-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 02-01-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 22, 2010, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 11, 2010. The claimant participated in the hearing. Mike Mann, Group Supervisor of Processing and Katie Halburg, Assistant Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time first shift bacon department employee for Farmland Foods from April 16, 2009 to January 5, 2010. He was discharged for food safety violations and safety violations. The employer allows one warning and a suspension for each category before termination occurs. The claimant received a written warning April 29, 2009, for chewing gum on the floor which is a food safety and USDA violation. On November 2, 2009, he received a three-day suspension for having cough drops in his mouth on the floor which is also a food safety and USDA violation. If he received one more food safety violation in a rolling 12-month period his employment would have been terminated. On April 26, 2009, he received a three-day suspension for a safety violation for incorrectly trimming meat which could have caused him injury. On June 16, 2009, he was observed running in the plant which could have injured him or others and he received another three-day suspension. On December 29, 2009, the claimant went into the maintenance shop where there are signs posted outside the door stating safety goggles are required. The claimant entered the maintenance shop without safety goggles and because that was his third safety violation within 12 months, his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant accumulated two food safety violations and three safety violations during the approximately nine months he was employed with Farmland Foods. He was warned or suspended following the first four violations and because he committed three safety violations within a rolling 12-month period his employment was terminated. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The January 22, 2010, reference 04, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs