

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIO A VILCHEZ
Claimant

APPEAL NO: 10A-UI-13578-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 08/22/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Mario A. Vilchez (claimant) appealed a representative's September 22, 2010 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Farmland Foods, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on November 9, 2010. This appeal was consolidated for hearing with one related appeal, 10A-UI-13577-DT. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Becky Jacobsen would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Ms. Jacobsen agreed that the administrative law judge should make a determination based upon a review of the available information. Based on a review of the available information 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?

FINDINGS OF FACT:

The claimant started working for the employer on April 30, 2009. He worked full time as production worker at the employer's Denison, Iowa facility. His last day of work was June 18, 2010. The employer discharged him on June 28, 2010. The stated reason for the discharge was fighting at work.

The claimant and a coworker had been having several arguments, and were given verbal warnings for these arguments on both June 17 and June 18. Later on June 18 the claimant and the coworker had another argument, which became physical with pushing and shoving; the claimant had been holding hot coffee which was dumped on the coworker, causing a significant burn. As a result of this further incident, the employer initially suspended the claimant, and subsequently discharged him on June 28.

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).

Fighting at work can be misconduct. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). A discharge for fighting is disqualifying misconduct unless the claimant shows 1) a failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) he attempted to retreat if was reasonable possible. Savage, supra. None of these criteria apply to the claimant's conduct in this incident. The claimant's engaging in fighting with the coworker 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 September 22, 2010 decision (reference 03) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 18, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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