

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEDRO PEREZ-HEREDIA**  
Claimant

**APPEAL NO: 11A-UI-14749-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 10-16-11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 7, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 8, 2011. The claimant participated in the hearing. Becky Jacobsen, 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 production worker for Farmland Foods from March 19, 2009 to October 14, 2011. On October 11, 2011, the claimant had a verbal confrontation with production worker Maria Garcia about how he was performing his job and she made a derogatory comment to him in Spanish. Ms. Garcia made some reference to someone else “taking care” of the situation, gave him a “bad stare,” and the claimant responded by stating, “If you were a man we could have handled things differently” meaning they could have had a physical altercation and been done with it. On October 12, 2011, the claimant was in the locker room talking to production worker Raul Sarragoca about the details of the incident the day before when production worker Guadalupe Garcia approached him and asked what happened the day before. The claimant did not respond and Mr. Garcia continued asking and the claimant continued to ignore him. Another employee came into the locker room and asked Mr. Garcia to move so he could access his locker but Mr. Garcia remained standing in front of the claimant. The claimant finally told Mr. Garcia it was not “your problem” and “not your business” and then removed his hardhat, throwing it on the floor. Mr. Garcia repeatedly asked what happened the day before and the claimant stood up and said the situation did not concern Mr. Garcia and Mr. Garcia pushed the claimant against the lockers and the claimant grabbed Mr. Garcia in a bear hug and again stated it was not his problem. Mr. Garcia picked up the claimant’s right leg and both men fell to the floor. The claimant repeatedly told Mr. Garcia it was not his problem as they wrestled on the ground. Production worker Raul Guitterez came into the locker room and

separated them, stating they were going to be fired and the claimant let go. The claimant sat down again and then went to human resources to report the incident. The employer took statements from both the claimant and Mr. Garcia, as well as other employees present, including those named by the claimant, but received differing accounts of what happened and who started the fight. Mr. Garcia stated he felt threatened when the claimant threw down his hard hat and took a step toward him and his version of events was supported by some of the witnesses but the employer could not determine exactly what happened but did conclude they both had opportunities to walk away from the situation. The claimant had been retrained on harassment and hostile work environments in July 2010 after conflicts with other co-workers but had not received any written warnings. Mr. Garcia did not have a history of problems with co-workers. The employer terminated the claimant's employment, and that of Mr. Garcia, for fighting on the job, which is a zero tolerance offense.

### **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 § 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 argued with Ms. Garcia October 11, 2011, and then had an argument and physical confrontation with Mr. Garcia October 12, 2011. The claimant had multiple opportunities to diffuse the situation by walking away or having a civil conversation with Mr. Garcia but instead

ignored him before throwing his hard hat to the floor and standing up in an aggressive manner. Both the claimant and Mr. Garcia acted inappropriately and physically fought on company property in violation of the employer's zero tolerance for fighting policy. Consequently, 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 November 7, 2011, reference 01, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs