

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SETH N JANSSEN
Claimant

FAREWAY STORES INC
Employer

APPEAL NO: 12A-UI-06866-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/13/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 5, 2012, reference 01, that held he was discharged for misconduct on May 11, 2012, and benefits are denied. A hearing was held in Des Moines, Iowa on July 17, 2012. The claimant participated. Theresa McLaughlin, HR Generalist, and Wes Bass, Warehouse Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time warehouse worker on September 18, 2006, and last worked for the employer on May 11, 2012. The claimant received an employee handbook that contained the policies of the employer. The policy provides that an employee may be terminated for conduct not in the best interest of the employer.

Claimant was walking behind co-worker Johnson as they were leaving the plant facility thru an entrance/exit turnstile. As Johnson was in the turnstile, claimant entered and his foot/ankle was struck by a rotating bar that rolled his ankle. He grabbed the turnstile to stop it and this caused the claimant to run into it causing some facial injury.

Johnson reported to the employer that claimant intentionally pulled the turnstile causing the injury but claimant denies it stating it was an accident. The employer submitted Johnson's written statement about the incident as evidence in this hearing. Claimant described what happened as an accident.

The claimant worked two additional shifts after the incident was reported and the employer elected not to suspend him pending investigation. The employer learned that claimant and

co-worker had a history of some bickering between them but there had been no discipline issued. Claimant admits there was some arguing with Johnson as they were leaving the plant, but he knew he was leaving employment within a week, such that he had no intention to harm him.

The employer met with claimant on May 11, and discharged him for the incident with the policy violation of conduct not in the best interest of the employer. The employer concluded claimant intentionally caused the injury to employee Johnson.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on May 11, 2012, for a violation of company policy.

The claimant offered a credible explanation that he was trying to prevent a personal injury when he grabbed the turnstile that caused employee Johnson to run into it. The claimant's direct testimony is given greater weight than employee Johnson who did not appear and testify. This is not a situation where two employees argued to the point where blows were directed at one another. It is believable as claimant describes that this was an accident rather than an intentional act to harm a co-worker. The fact the employer allowed claimant to work two

additional shifts after the incident though it was immediately reported puts into question how serious it perceived it to be. Job disqualifying misconduct is not established.

DECISION:

The department decision dated June 5, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on May 11, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs