

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAO B LIMA
Claimant

APPEAL NO. 07A-UI-09535-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

**OC: 09/02/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joao B. Lima (claimant) appealed a representative's October 8, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Farmland Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2007. The claimant participated in the hearing. Brandy Andrews appeared on the employer's behalf and presented testimony from one other witness, Kip Malone. Based on the evidence, the arguments of the parties, 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 July 7, 2003. He worked full time as a production worker at the employer's Denison, Iowa pork slaughter and processing facility on the second shift. His last day of work was August 23, 2007. The employer suspended him that day and discharged him on September 6, 2007. The stated reason for the discharge was insubordination, being threatening, and making a hostile work environment.

At approximately 6:00 p.m. the night cleanup supervisor approached the claimant's line and indicated that there was going to be some additional work added to the line. The claimant became upset and began to argue with the supervisor. The claimant had a history of difficulties and stress caused by issues with the supervisor's competency. The supervisor indicated to the claimant that he was to come with the supervisor to the office. While proceeding to the office, the two went up a ramp from one area to another.

While on the ramp, the two continued arguing, and the supervisor pointed his finger in the claimant's face and onto his chest stating that the claimant was to do what he was told. The two began bumping chests. The supervisor stopped, put his hands above his head, and called to Mr. Malone, a night cleanup person who was at the doorway at the top of the ramp, for help.

Mr. Malone came down the ramp to intercede, but in the approximately 35 seconds it took him to get to where the claimant and supervisor was, the claimant continued to push and bump into the supervisor's chest even though the supervisor was not pushing back but was merely trying not to lose his footing on the wet and slippery ramp.

Mr. Malone stepped between the two men, at which time the supervisor proceeded up the ramp and to the office. When the supervisor was clear, Mr. Malone stepped aside and the claimant proceeded up the ramp. He was then sent home on suspension.

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Physical aggression at work can be misconduct. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). A discharge for such aggression is disqualifying misconduct unless the claimant shows 1) failure from fault in bringing on the problem; 2) a necessity to fight or push back; and 3) that he attempted to retreat if reasonable possible. Savage, supra. While the supervisor may have been partially at fault as well, the claimant was not free from fault, he did not have a necessity to push or bump back, and he did not attempt to retreat but rather continued the contact after the supervisor had ceased any contact he might have engaged in. The claimant's bumping and pushing of the supervisor was also insubordination. While the claimant might have had good reason to be frustrated with the supervisor, his physical conduct in particular in the incident is not excusable and 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 October 8, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 28, 2007. 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

ld/pjs