

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL AKEC
Claimant

APPEAL NO: 13A-UI-06181-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 04/21/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Daniel Akec (claimant) appealed an unemployment insurance decision dated May 21, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Farmland Foods, Inc. (employer) for work-related misconduct. The claimant initially requested an in-person hearing but subsequently stated he wanted a telephone hearing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 19, 2013. The claimant's primary language is Dinka and he participated in the hearing with the assistance of interpreter Ando Anguey. The employer participated through Becky Jacobsen. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from September 23, 2009 through April 8, 2013 when he was discharged for a physical altercation with a co-worker, which was a violation of the return to work agreement he signed on January 2, 2013. The employer has zero tolerance for violence and threats of violence. The claimant was suspended on December 19, 2012 for telling a co-worker that he was going to kick the co-worker's ass. The investigation also validated a prior incident wherein the claimant followed co-worker Joseph Bol out to the parking lot and to his car. The claimant was allowed to return to work on January 7, 2013 on a final warning providing that any further similar incidents would result in termination.

The final incident occurred on March 28, 2013 when the claimant questioned Joseph Bol about something. Mr. Bol did not respond and went to the locker room but the claimant followed him. Mr. Bol reported that the claimant pushed him in the locker room. The claimant denied pushing Mr. Bol but did admit to placing his hand on Mr. Bol's shoulder and pointing his finger in

Mr. Bol's face. There were several allegations of threats and intimidation by the claimant in addition to the substantiated incident in December 2012. In the hearing, the claimant denied following Mr. Bol to the locker room and denied touching hitting, pushing and/or touching him.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if he was discharged for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

The claimant was discharged on April 8, 2013 for repeated harassment of co-workers even after being placed on a final warning. At the time the employer investigated the matter, the claimant admitted placing his hand on the co-worker's shoulder and pointing his finger in the co-worker's face even though he denied it in the hearing. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The employer has met its burden and benefits are denied.

DECISION:

The unemployment insurance decision dated May 21, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css