

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REGINALD MITCHELL
Claimant

APPEAL NO: 09A-UI-01589-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 01-04-09 R: 01
Claimant: Appellant (1)

Section 96.5-2-a - Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 30, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Farmland Foods, Inc. for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2009. The claimant participated in the hearing with Union Representative Leo Kanne and Attorney Dennis McElwain. The employer participated through Becky Jacobsen, Human Resources Manager and John Burnholtz, Group Supervisor. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 July 11, 2008 through January 7, 2009. The employer's work rules prohibit conduct or behavior that may be physically dangerous to employees and others, which includes threatening and harassing conduct, fighting, coercing and horseplay. Violations of policy result in disciplinary action, up to and including, termination. The claimant signed for a copy of the employer's handbook, and the code of business conduct and ethics, at the time of hire. He received a written warning November 25, 2008, for inappropriate conduct and violation of the above mentioned policy. The claimant and another employee were calling each other names such as "white trash." The claimant was discharged after a second violation of the dangerous and/or threatening conduct policy January 3, 2009. He and Miguel Mendoza were involved in a verbal altercation that turned physical. The claimant said Mr. Mendoza started calling him lazy and he told Mr. Mendoza to shut up. The claimant called Mr. Mendoza gay, said he liked the "penis" and that he stunk like "assholes." They both told each other to quit being stupid. The altercation escalated when the claimant threw meat and fat at Mr. Mendoza and Mr. Mendoza threw meat and fat back at Mr. Mitchell and Mr. Mendoza responded by knocking off the claimant's hard hat. Mr. Mendoza reported the incident to the supervisor and both employees

were suspended pending further investigation. The employer's investigation confirmed both parties were involved in the altercation and both parties were discharged January 7, 2009.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 claimant was discharged for a second violation of inappropriate conduct after being warned November 25, 2008. While Mr. Mendoza contributed, and may have instigated, the problem with the claimant prior to the altercation, the claimant lost his temper and assaulted Mr. Mendoza by throwing meat and fat at him. Mr. Mendoza assaulted the claimant by knocking off his hard hat and both parties were discharged for fighting. The claimant participated in the altercation and did not attempt to retreat. Although he had sought supervisor assistance in the past, he let his temper get the best of him when he assaulted his co-worker on this occasion. The administrative law judge must conclude 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). Benefits are denied.

DECISION:

The unemployment insurance decision dated January 30, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work due to disqualifying job 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs