

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RONNIE G SLECHTA
2437 HWY 30
DENISON IA 51442

FARMLAND FOODS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02803-JTT
OC: 02/13/05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Ronnie Slechta filed a timely appeal from the March 10, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 4, 2005. Claimant did participate. Employer did participate through Denise Baldwin, Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker through February 1, 2005, when the Plant Manager, Jim Schaben, discharged him for violating the employer's policy against violence in the workplace.

The incident that prompted Mr. Slechta's discharge occurred on January 26, 2005. On that date, Mr. Slechta and a co-worker got into a heated argument that involved yelling and name-calling. The argument took place when Mr. Slechta confronted the co-worker about leaving the production line for a break without getting someone to replace him. During the argument, the co-worker referred to Mr. Slechta as a "big fat fucker." Mr. Slechta responded by instructing the co-worker to meet him after work at the sale barn for a fight. Mr. Slechta did not expect the co-worker to follow through, due to the difference in size between Mr. Slechta and the co-worker. As soon as the verbal dispute ended, the co-worker reported the incident to management. Two or three co-workers observed the dispute and provided written statements to the employer that implicated Mr. Slechta as the primary aggressor in the incident. Though the incident took place on January 26, the employer did not discharge Mr. Slechta until six days later on February 1. Mr. Slechta continued to work during this period of delay. In November 2004, Mr. Slechta and the same co-worker engaged in a verbal dispute and Mr. Slechta was reprimanded as a result of the incident.

The employer has a policy prohibiting violence in the workplace. The policy is set forth in the employee handbook. Mr. Slechta received a copy of the handbook on February 6, 2002. The policy prohibits "threatening, harassing, fighting, or coercing" another employee and warns that a first offense may result in termination.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Slechta was discharged for misconduct in connection with his employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Dept. Of Job Services, 533 N.W.2d 573 (Iowa App. 1995).

The evidence in the record establishes that Mr. Slechta was discharged for misconduct after he directed threats of violence toward a co-worker, despite being aware of the employer's policy against such behavior. Accordingly, Mr. Slechta is disqualified for benefits.

DECISION:

The Agency representative's decision dated March 10, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for benefits until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount.

jt/sc