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

LEONEL CORONA
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Appeal Number: **05A-UI-08459-CT**
OC: 07/10/05   R: 01
Claimant: Respondent (2)

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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Farmland Foods, Inc. filed an appeal from a representative's decision dated August 9, 2005, reference 01, which held that no disqualification would be imposed regarding Leonel Corona's separation from employment. After due notice was issued, a hearing was held by telephone on September 1, 2005.   Mr. Corona participated personally and was represented by Dennis McElwain, Attorney at Law, who offered additional testimony from Jesus Cortez. The employer participated by Denise Baldwin, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Corona was employed by Farmland Foods, Inc. from March 3, 1999 until July 8, 2005 as a full-time production worker. He was discharged for fighting on the job.

Mr. Corona's wife also worked for Farmland Foods, Inc. For some time, she had been having conversations with another employee, Elmer Orlano, and had received a letter from him. Mr. Corona believed the two were having an intimate relationship and asked his wife to discontinue the contacts with Mr. Orlano. Mr. Corona attempted to have his supervisor stop the two from having contact at work but the supervisor declined to get involved in the personal matter. On June 28, 2005, Mr. Corona went to the area where Mr. Orlano and his wife worked. He went to the area minutes after having observed his wife and Mr. Orlano talking to each other. He went there with the intent of speaking to Mr. Orlano about talking to his wife. Mr. Orlano was walking in front of Mr. Corona with his back to him. Mr. Corona touched him on the back and began trying to talk to him. Mr. Orlano turned around and pushed Mr. Corona away. He placed both hands on his chest and pushed him. Mr. Corona responded by hitting him in the mouth.

Mr. Orlano was seen in health services as a result of the blow. His lip and mouth were swollen and there was blood in his mouth. A tooth had punctured his lower lip. When questioned, Mr. Orlano indicated that Mr. Corona was upset because he was talking to his wife and punched him. He denied having pushed Mr. Corona. Jesus Cortez was present and verified that Mr. Orlano had pushed Mr. Corona. As a result of the incident, Mr. Corona was suspended from work on June 28 and notified of his discharge on July 8, 2005. The above matter was the sole reason for the discharge.

Mr. Corona has received a total of $1,944.00 in job insurance benefits since filing his claim effective July 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Corona was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Corona was discharged for fighting on the job in violation of a known work rule. The administrative law judge concludes that Mr. Corona initiated the confrontation with Mr. Orlano. Mr. Corona went to Mr. Orlano's work area, an area he had no work-related reason to be in. Given his long-standing concern about his wife's relationship with Mr. Orlano and given the fact that he had just observed the two again talking to each other, the administrative law judge believes Mr. Corona was upset when he went to their work area. He approached Mr. Orlano from behind and touched him on the back while trying to talk with him about his wife. Mr. Corona made the first physical contact and Mr. Orlano responded by turning around and pushing him away.

Mr. Corona had the opportunity to retreat from the incident when Mr. Orlano pushed him. He could have sought the assistance of a supervisor but did not. Instead, he punched Mr. Orlano in the mouth. The administrative law judge does not believe that Mr. Orlano was struck inadvertently while Mr. Corona was attempting to defend himself from the push. The two are

approximately the same height. Since Mr. Orlano pushed him with both hands, it seems likely that his arms would be outstretched as he pushed. Mr. Corona testified that his hand came into contact with Mr. Orlano's mouth as he was raising his hands to cover his face. If Mr. Corona's knee-jerk reaction was to cover his face, it seems unlikely that his hands would have come into contact with Mr. Orlano's face given the fact that Mr. Orlano's outstretched arms would have increased the distance between the two. The scenario described by Mr. Corona does not seem plausible. The administrative law judge believes Mr. Corona struck Mr. Corona in the mouth after being pushed. It seems unlikely that an inadvertent touch to Mr. Orlano's face would have resulted in a tooth puncturing his lower lip. Such damage would more likely be the result of a punch to the mouth.

As stated previously, Mr. Corona had the opportunity to retreat from the incident rather than escalating it. His blow to Mr. Orlano was not in self-defense but in anger because he was upset about the relationship between Mr. Orlano and his wife. Because of the circumstances surrounding the incident of June 28, the administrative law judge concludes that Mr. Corona was guilty of misconduct. He went to an area he had no reason to be in, approached a coworker about a personal matter, and, in anger, made physical contact with that individual, a contact that culminated in Mr. Corona punching the other individual in the mouth. His conduct constituted a substantial disregard of the standards the employer had the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Corona has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 6.3(7).

DECISION:

The representative's decision dated August 9, 2005, reference 01, is hereby reversed. Mr. Corona was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Corona has been overpaid $1,944.00 in job insurance benefits.

cfc/pjs