

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUAN ROSALIO CAMPOS**  
Claimant

**APPEAL NO. 07A-UI-11135-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 11/11/07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Juan Rosalio Campos (claimant) appealed a representative's November 30, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Farmland Foods (employer) for fighting on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 18, 2007. The claimant participated personally through Sara Gardner, Interpreter. The employer participated by Becky Jacobsen, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for 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 hired on April 28, 2005, as a full-time general laborer. The claimant signed for receipt of the employer's handbook on March 14, 2006. On October 31, 2007, a co-worker approached the claimant and touched the claimant's arm twice. The claimant told the coworker to leave. The claimant grabbed the co-worker by the shoulder to get him to leave. The employer suspended the claimant on October 31, 2007, and terminated him on November 16, 2007. Both the claimant and the co-worker were terminated.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). "[A]n employer has the right to expect decency and civility from its employees." The court found substantial evidence of offensive words and body language in the record of the case. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). A threat to make it miserable for the employer is sufficient to establish misconduct. Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App. 1990).

An employer has a right to expect employees to conduct themselves in a certain manner even in a drinking establishment. The claimant disregarded the employer's right by physically grabbing a co-worker. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

## **DECISION:**

The representative's November 30, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been

paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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