

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAYNE M WARNKE
Claimant

APPEAL NO. 12A-UI-08365-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY
Employer

**OC: 06/10/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Shayne Warnke (claimant) appealed a representative's July 2, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Agri Star Meat & Poultry (employer) for violation of a known rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 7, 2012. The claimant participated personally. The employer participated by Laura Roney, Payroll Human Resources Assistant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 September 1, 2010, as a full-time general laborer. The claimant signed for receipt of the employer's handbook on September 1, 2010. The employer issued the claimant a written warning on April 23, 2012, for taking lengthy breaks. On April 22 and June 13, 2012, the employer issued the claimant written warnings for engaging in horseplay on the job. The employer notified the claimant that further infractions could result in termination from employment.

On June 20, 2012, the claimant splattered chicken blood on the back of a rabbi and threw feathers at the rabbinical staff. The poultry foreman told the claimant that his actions were not acceptable. On June 21, 2012, the claimant painted his face with chicken blood. The employer terminated the claimant on June 21, 2012.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An incident of horseplay may constitute job disqualifying misconduct where there has been a previous record of discipline and warnings. Pfeiler v. Employment Appeal Board, 455 N.W.2d 307 (Iowa App. 1990).

The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. 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 claimant was discharged for misconduct.

DECISION:

The representative's July 2, 2012 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css