

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

PAL GATKUOTH DIEW
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Appeal Number: 05A-UI-05721-DWT
OC: 05/08/05 R: 01
Claimant: Appellant (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

STATEMENT OF THE CASE:

Pal Gatkuoth Diew (claimant) appealed a representative's May 23, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Farmland Foods, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2005. The claimant participated in the hearing with his attorney, Stephen Engelhart. Denise Baldwin, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 12, 2002. The claimant worked as a full-time production worker on the kill floor. The claimant received information about the employer's zero tolerance policy regarding fighting, harassing or threatening co-workers.

Prior to May 2, 2005, the claimant's job was not in jeopardy and the claimant did not have any problems with his Spanish-speaking co-workers. On May 2, 2005, a co-worker, J., incorrectly concluded the claimant threw the lip of a cow at him. The bloody lip fell in some water by J. J. became upset and went to the claimant's workstation. J. started pushing the claimant around. The claimant attempted to block J. from shoving him. Instead of backing down, J. stabbed the claimant in the back with a chisel. Although his co-workers did not want him to report the incident, the claimant reported that J. stabbed him with a chisel. The employer took the claimant to the hospital.

J. and the other co-workers reported that the claimant started the incident when the claimant went to J.'s workstation and slapped J. on the face. No one reported that H. threw a bloody cow lip at J. Based on the co-workers' reports, the employer concluded the claimant violated the employer's no harassment policy. The employer discharged the claimant on May 10, 2005. The employer also discharged J.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing. As a result, the findings of fact reflect the claimant's version of events on May 2, 2005. A preponderance of the evidence shows that J. instigated the incident because he incorrectly assumed the claimant had thrown the bloody cow lip at him. The claimant tried to protect himself when J. pushed him around. While the claimant should have immediately contacted a supervisor, his failure to do

so amounts to a good faith error under these circumstances. The evidence does not establish that the claimant violated the employer's policy or committed work-connected misconduct. Therefore, as of May 8, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 23, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 8, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs