

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN G LADEHOFF**  
Claimant

**APPEAL NO. 08O-UI-05599-H2T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 03-09-08 R: 01  
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.6(2) – Relief from Benefit Charges/Relief from Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 10, 2008, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on July 1, 2008. The claimant did not participate. The employer did participate through Becky Jacobsen, Human Resources Manager.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits, and if so, whether he is overpaid benefits as a result.

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker, full-time, beginning October 15, 2007, through February 19, 2008, when he was discharged. The claimant left work early on February 11 prior to the end of his shift. The claimant had been given the employer's handbook, which requires that any employee needing to leave the plant or work early report to their supervisor. The claimant did not tell his supervisor or any other supervisor that he was leaving the plant. The claimant told Alejandra Ayala Ortiz, a non-supervisory coworker, that he was leaving, but he did not ask Mr. Ortiz to report that he was leaving to his supervisor. The claimant had seen his supervisor earlier in the shift and knew that his supervisor was working. There are supervisors available all over the plant for an employee to talk to if they cannot locate their own direct supervisor. After leaving early without permission, the claimant called in sick the following day, February 12, 2008. The claimant was a no-call, no-show on February 13. The claimant called in on February 14 and indicated he was sick and would return to work on Thursday (which was February 14, so his message did not make sense.) The claimant called in a second time on February 14 and indicated he would not be back until Monday, February 18, which was a holiday for the employer. The claimant returned to work on February 19 and was stopped at the guardhouse and not allowed to enter the plant. At that time, he was told that he

was considered a voluntary quit for leaving work early on February 11 without permission or without notification to a supervisor that he was leaving the premises.

The claimant received a verbal warning for absenteeism on January 18, 2008. The claimant was reinstated by the employer on March 25, 2008 and returned to work.

Another administrative law judge held an initial hearing and allowed benefits, at which point employer appealed to the Employment Appeal Board, which remanded for another hearing without vacating the administrative law judge's decision.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 gave the claimant a handbook that clearly indicated that he was to have permission or at least notify a supervisor before leaving the plant prior to the end of his shift. The employer would have no way of knowing which employees were still in the plant in case of an emergency if employees were not required to notify supervisors when they were leaving early. The claimant told Mr. Ortiz he was leaving, clearly demonstrating his ability to tell another

he was leaving the plant. The claimant did not ask Mr. Ortiz to report to the supervisor nor did Mr. Ortiz do so on his behalf. The claimant knew or should have known that leaving work early without permission or even notification to management was conduct that would be considered job abandonment by his employer. In leaving work early without notification to management in case of an emergency, the employer would have no idea whether claimant was still stuck in the plant and in need of assistance or rescue. Others could place their own safety at risk trying to rescue or assist an employee who was not even in the plant. An employer clearly has a right to know when employees are leaving the plant prior to the end of their work shifts. The claimant was capable of notification, as he notified Mr. Ortiz. The claimant's decision to leave early without notification to a supervisor under these circumstances constitutes disqualifying misconduct. Benefits are denied.

The administrative law judge further concludes the employer shall be relieved from benefit charges and claimant has not been overpaid benefits due to the two decisions allowing benefits prior to this decision.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the Board remanded the other administrative law judge's decision without vacating, which essentially leaves two administrative law judge decisions either in conflict or as a redundancy, the directive of the agency is that no overpayment shall be assessed. Thus, because the fact-finder allowed benefits and the initial administrative law judge decision also allowed benefits, claimant shall not be required to repay benefits already received at the time of the reversal and employer's account shall not be charged.

**DECISION:**

The April 10, 2008, reference 04, decision is modified in favor of the appellant. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Pursuant to agency directive, the claimant is not overpaid benefits, due to two decisions allowing benefits by the fact-finder and the initial administrative law judge, and employer shall not be liable for any related benefit charges.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw/kjw