

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIO H HERNANDEZ**  
Claimant

**APPEAL NO: 11A-UI-09107-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 06/12/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2) - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 5, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Jessica Garcia, the human resource assistant manager, appeared on the employer's behalf. Olga Esparza interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2010. He worked as a full-time production employee. The employer informs employees that if they accumulate 12 attendance points in a rolling calendar year, they will be discharged for excessive absenteeism. When an employee calls in sick but does not have a doctor's statement, the employer assesses two points. When an employee calls in sick and provides a doctor's statement, the employer assesses one attendance point. If an absence is covered under FMLA, no attendance points are assessed.

The claimant started calling in sick in late December 2010. When the claimant called in, he reported he was ill and unable to work all but one time. As a result of problems the claimant had sleeping and eating he did not feel well and called in about once every other week to report he was ill and unable to work.

On February 2, 2011, the employer gave the claimant three written warnings. He received a written warning for having six attendance points. He received another written warning for accumulating eight points. He also received a written warning for having ten attendance points as of February 2, 2011. After receiving these warnings, the claimant understood his job was in jeopardy.

The claimant notified the employer he was ill and unable to work on February 8. The claimant went to his doctor, who restricted him from working the rest of the week. The employer assessed the claimant one attendance point after his doctor restricted him from doing any work that week. On March 11, the claimant went to work, but became ill at work. He told his supervisor he did not feel well and did not believe he could do his work satisfactorily. The claimant's supervisor gave him permission to leave work five hours early. The employer gave the claimant one attendance point for leaving work early on March 11.

On March 15, the employer discharged the claimant. The employer discharged the claimant because he had accumulated 12 attendance points in less than a year. The claimant violated the employer's attendance policy by having excessive absenteeism.

#### **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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established business reasons for discharging the claimant. Based on the employer's attendance policy, the claimant violated this policy by accumulating 12 points in less than a year. The claimant accumulated his attendance points because he was ill and unable to work. Since the claimant did not go to a doctor every time he did not feel well, he usually received two points instead of one point.

After the claimant received the February 2 warnings, he understood his job was in jeopardy. When the claimant was absent four days in February, the employer only assessed him one attendance point because he went to his doctor who restricted him from working the rest of that week. About a month later, the claimant became ill at work. Even though he talked to his supervisor when he did not feel well and received permission to leave work early, the employer gave him another attendance point. As of March 11 after the claimant left work early, he had accumulated 12 attendance points in less than a year.

Since the claimant properly notified the employer when he was ill and unable to work, the facts do not establish the claimant intentionally failed to work as scheduled. He did not commit work-connected misconduct. As of June 12, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 5, 2011 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons when he accumulated 12 attendance points in less than a year. The claimant did not commit work-connected misconduct. As of June 12, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs