

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

Appeal Number: 04A-UI-01871-DWT  
OC 01/11/04 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, 4<sup>th</sup> 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.

**MATTHEW L NEDDERMEYER**  
1476 – 140<sup>TH</sup> ST  
CHARTER OAK IA 51439

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 are based.

**FARMLAND FOODS INC**  
C/O GATES MCDONALD & COMPANY  
PO BOX 182366  
COLUMBUS OH 43218-2360

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Matthew L. Neddermeyer (claimant) appealed a representative's February 9, 2004 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 March 10, 2004. The claimant participated in the hearing. Becky Nelson, the human resource coordinator, 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 August 30, 2000. He worked as a full-time production worker in the loading department. The employer's written attendance policy informs employees they will be discharged if they accrue 12 attendance points within a rolling calendar year. As a result of his absences, the employer placed the claimant on attendance letter status on July 30, 2001. This meant for an absence to be excused for medical reasons, the absence had to be a serious illness that would qualify under the family medical leave act. The employer reviewed the claimant's attendance every year and kept him on the attendance letter status.

On November 20, 2003, the claimant received his final written warning. He had ten attendance points as of November 20, 2003. The claimant called in sick on December 1. He did not provide a doctor's statement verifying he was ill. Even if the claimant had provided a doctor's statement, he would have been assessed one attendance point. The claimant was late on December 6. As of December 6, the claimant had +11 attendance points.

On December 18 and 19, the claimant properly notified the employer he was ill and unable to work. When the claimant returned to work on December 22, he had a doctor's statement verifying he had been ill and unable to work as scheduled on December 18 and 19. The claimant's illness, the flu, did not qualify as a serious illness and the employer assessed the claimant one attendance point.

Pursuant to the employer's attendance policy, the employer discharged the claimant for excessive absenteeism on Monday, December 22, 2003.

#### 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. 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 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). While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established a business reason for discharging the claimant because he violated the employer's attendance policy. For unemployment insurance purposes, the claimant's absences on December 1, 18 and 19 were beyond his control because he was ill and unable to work as scheduled. The claimant properly reported he was ill and unable to work. Even though the claimant had excessive absenteeism pursuant to the employer's policy, he did not

intentionally and substantially disregard the employer's interests when he was unable to work these three days. The claimant did not commit work-connected misconduct. As of January 11, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 9, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 11, 2004, 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/b