

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYSON M ERNST**  
Claimant

**APPEAL NO. 12A-UI-01835-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 01/01/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Farmland Foods, Inc. filed a timely appeal from a representative's decision dated February 13, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 12, 2012. The claimant participated. The employer participated by Ms. Becky Jacobsen, human resource manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Tyson Ernst was employed by Farmland Foods, Inc. from April 6, 2011, until January 5, 2012, when he was discharged from employment for excessive absenteeism. Mr. Ernst worked as a full-time production worker and was paid by the hour. His immediate supervisor was Christy Promise.

The claimant was discharged when he exceeded the permissible number of attendance infractions allowed under the company's established policy. Under the policy, employees are subject to discharge if they accumulate 12 attendance infraction points in a 12-month rolling period. Mr. Ernst was aware of the policy and had been warned about his attendance. Mr. Ernst had been absent or left work early on a number of occasions due to illness. On some occasions, however, the claimant's absences, it appears, were for personal reasons.

The final absence that caused the claimant to be discharged took place when Mr. Ernst left work early on January 3, 2012, due to illness. The claimant called in the following day, January 4, 2012, because he was still ill. The claimant believed that the doctor had sent a note to the employer via fax verifying that he had been ill. The employer did not receive any doctor's note.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the claimant was discharged when he exceeded the permissible number of attendance infractions allowed under company policy. The final attendance infractions that caused the claimant to be discharged took place on January 3 and January 4, 2012. On January 3, the claimant left work early due to illness and properly reported his leaving to his supervisor. The claimant called in sick on January 4, 2012, and attempted to provide a doctor's verification that he had been ill.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is a form of job misconduct. The

Court held that it must be excessive and unexcused and that the concept included tardiness, leaving early, etc. The Court further held, however, that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

Inasmuch as the evidence in the record establishes the claimant's final absences were due to illness and were properly reported, the administrative law judge must conclude that the claimant was separated under non-disqualifying conditions. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits.

**DECISION:**

The representative's decision dated February 13, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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