

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL NYAEN
Claimant

APPEAL NO. 12A-UI-09837-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 07/15/12
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Samuel Nyaen, appealed an unemployment insurance decision dated August 9, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 6, 2012. The parties were properly notified about the hearing. Nyaen participated in the hearing. Jessica Garcia participated in the hearing on behalf of the employer.

ISSUE:

Was Samuel Nyaen discharged for work-connected misconduct?

FINDINGS OF FACT:

Samuel Nyaen worked full-time for the employer as a production employee from August 10, 2011, to June 28, 2012. Nyaen was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

Nyaen was off work with notice to the employer from June 29 to July 6, 2012, because a family member in Texas had died. When he called in on July 6, he spoke to the human resources assistant, Jessica Garcia. He told Garcia that he would be back at work on July 10, 2012.

The funeral for Nyaen's family member was delayed until July 13 due to the need to have an autopsy done. Nyaen did not report back to work on July 10 and did not call to notify the employer that he needed more time off. He was also absent without notice on July 11, 12, and 13. On July 16, the employer sent Nyaen a termination letter stating that based on his absences without notice, he was deemed to have voluntarily quit employment.

Nyaen contacted Garcia on July 19 after he returned from Texas. He had a note from the funeral home showing he had attended his uncle's funeral on July 13. He asked if he still had a job, but Garcia informed him that he had been terminated.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe Jessica Garcia's testimony that Nyaen said he would be returning to work on July 10. I do not believe Garcia left it wide open for Nyaen to take as much time off as he needed.

Nyaen was absent from work without proper notice in violation of the employer's policies starting July 10 and was discharged for work-connected misconduct.

DECISION:

The unemployment insurance decision dated August 9, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw