

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAMINE DEKO**

Claimant

**APPEAL NO. 10A-UI-05691-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**

Employer

**OC: 03/14/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated April 6, 2010, reference 01, that held the claimant was not discharged for misconduct on March 12, 2010, and benefits are allowed. A telephone hearing was held on June 2, 2010. The claimant participated. Becky Jacobson, HR Manager, participated for the employer. Employer Exhibits 1 and 2 were received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time probationary production worker from February 10, 2010 to March 12. The claimant received the employer policy during orientation that requires production employees to call in and daily report absences to work. The employer has an attendance point system that states five points may cause a termination from employment.

The claimant was late to work four minutes on February 18 and his probation was extended sixty-five days from his start date. The claimant was issued two points for an absence that was called in due to personal business on February 22. The claimant was given one point for a properly reported absence on March 10, because he provided a doctor's statement that also covered the following day. The employer discharged the claimant on March 12 when he returned to work, because he failed to call in and report his absence the day before. The final incident was given three points.

**REASONING AND CONCLUSIONS OF LAW:**

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(8) provides:

(8) Past acts of misconduct. 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(7) provides:

(7) 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 administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on March 12, 2010, because claimant's properly reported absences due to illness does not constitute excessive "unexcused" absenteeism and/or a current act of misconduct.

The employer attendance policy is not controlling on whether the claimant's attendance issues constitute misconduct. The claimant had one unexcused absence for personal business before his properly reported absence due to illness for March 10 that is excusable. The employer did not refute the claimant's testimony his doctor excuse provided to the employer covered his absence for March 11. Since the claimant put his employer on notice in advance of March 11 he would miss work due to illness, he is excused.

**DECISION:**

The decision of the representative dated April 6, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on March 12, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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