

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHAN H PRYOR**  
Claimant

**APPEAL NO. 10A-UI-11961-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 07-04-10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 16, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on October 12, 2010. The claimant did participate. The employer did participate through Becky Jacobson, Human Resources Manager.

**ISSUE:**

Was the claimant discharged due to job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning June 2, 2010 through July 8, 2010 when he was discharged.

The claimant was told during his orientation that good attendance was mandatory during the initial probationary employment period. The employer does excuse absences due to illness with the proper doctor's documentation and with proper notice to the employer. On June 11 the claimant called in absent due to personal business (car problems) and again on July 7, the claimant called in absent due to personal business. The employer's policy provides that two unexcused absences during the first 45 working days of employment can lead to discharge. After his absence on June 11 the claimant was given written warning which put him on notice that his probationary period was being extended and that another unexcused absence could lead to his discharge.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

#### **DECISION:**

The August 16, 2010 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs