

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOANN BARNUM**  
Claimant

**APPEAL NO. 11A-UI-12802-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOOD INC**  
Employer

**OC: 08/28/11**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Farmland Foods, Inc. (employer) appealed an unemployment insurance decision dated September 21, 2011, reference 01, which held that JoAnn Barnum (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 21, 2011. The claimant participated in the hearing. The employer participated through Becky Jacobsen, human resources manager. Employer's Exhibits One through Four were admitted into evidence. 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:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from April 30, 1999, through August 15, 2011. She was discharged from employment due to excessive absenteeism, with a final incident on August 11, 2011, when she was absent due to personal business. The claimant was last warned on January 7, 2011, that she faced termination from employment upon another incident of unexcused absenteeism. She was subsequently tardy on June 15, 2011 and July 28, 2011. The claimant had well over 100 absences due to illness, but they were all excused and not the basis for her termination.

The employer's attendance policy is on a rolling 12-month calendar, and an employee is subject to discharge if he or she accumulates 12 points. As points become 12 months old, they fall off the employee's record. If an employee receives three final written warnings within a rolling 24-month period, the employee may be discharged. The final warnings contain this information. Final written warnings are issued to an employee once they accumulate ten attendance points.

The claimant was discharged after she received her third final written warning within a 24-month period. She received final written warnings on May 3, 2010; January 7, 2011; and August 12, 2011.

The claimant filed a claim for unemployment insurance benefits effective August 28, 2011, but has not received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Newman v.*

*Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant was discharged on August 12, 2011 for excessive unexcused absenteeism.

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).

The claimant now contends that she only missed work due to her back problems. However, she had extensive medical absences that were covered under FMLA and if she was absent due to health reasons, she would have reported it as such so that it would be excused. She acknowledged in the hearing that her final absence was not due to illness.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused. The final absence, in combination with the claimant’s history of absenteeism, is considered excessive. Benefits are denied.

#### **DECISION:**

The unemployment insurance decision dated September 21, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this decision.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw