

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB A DAU**  
Claimant

**APPEAL NO. 12A-UI-02661-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 01/29/12**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jacob Dau, filed an appeal from a decision dated March 13, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 3, 2012. The claimant participated on his own behalf. The employer, Farmland Foods, did not provide a telephone number where a witness could be contacted and did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Jacob Dau was employed by Farmland from July 28, 2010 until November 11, 2011 as a full-time production worker. In August 2011 he requested FML in order to return to Africa because his mother was having surgery. The employer approved 12 weeks off, but the claimant did not return until January 2012. He was not providing care for his mother as she was in the hospital, which was in Kenya. But, the language spoken in Kenya is Swahili or English, and the claimant's mother did not speak either, only her native language Dinka.

Mr. Dau remained until he could make arrangements for another relative to come to Kenya to act as interpreter and then he had difficulty finding an available plane ticket with the necessary connections to return to the United States. He was able to return in January 2012.

When he returned, he found a discharge letter from Farmland dated November 11, 2011. He asked for his job back and the employer, who had never received the FML papers, requested a copy of them. When these were received, the claimant was told he had to wait nine months before he could be rehired.

**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(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.

It is apparent the claimant's understanding of English is a bit limited, but his testimony that he did his best to provide the employer with the required documents is credible. Whether or not he was approved for any time after November 2011 is irrelevant, because he had to remain in Africa to assist his mother communicating with the health care providers until other arrangements could be made. There was no deliberate intent to defraud the employer or to extend his FML for personal reasons. Misconduct has not been established and disqualification may not be imposed.

**DECISION:**

The representative's decision of March 13, 2012, reference 01, is reversed. Jacob Dau is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw