

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

STEVEN E CRUM  
208 SOUTH 16<sup>TH</sup>  
DENISON IA 51442

FARMLAND FOODS INC  
C/O TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166

Appeal Number: 05A-UI-03132-JTT  
OC: 02/20/05 R: 01  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

Steven Crum filed a timely appeal from the March 16, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 2, 2005. Mr. Crum participated in the hearing. The employer participated through Denise Baldwin, Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Crum was employed by Farmland Foods as a full-time production worker from August 31, 1992

until February 18, 2005, when Brian Boland, Plant Supervisor, discharged him for excessive absenteeism. There was no other reason for the discharge.

Farmland Foods has a written attendance policy that is set forth in an employee handbook. Mr. Crum was aware of the policy, having previously been a union steward at Farmland Foods. Under the policy, an employees are subject to termination upon accrual of twelve attendance points within a rolling 12-month period. Under the policy, an employee does not accrue any points for absences due to illness so long as he reports the absence prior to the start of his shift and provide a doctor's excuse when upon returning to work. If an employee notifies the employer of an absence after the scheduled start of the shift, the employee accrues one attendance point for late notification. An employee receives an oral warning when he accrues five points, a first written warning when he accrues eight points, a second written warning at ten points, and is subject to termination if he accrues twelve attendance points.

The final absence that prompted Mr. Crum's discharge occurred on February 17, 2005. On that date, Mr. Crum was absent due to illness, but did not notify the employer of the absence until 7:21 a.m. for a 6:00 a.m. shift. Mr. Crum did provide a doctor's excuse the next day.

Mr. Crum's previous absences were as follows. On April 3, 2004; June 5, 2004; January 12, 2005; and January 18, 2005, Mr. Crum was absent due to illness properly reported. On April 24, 2004; July 13, 2004; August 12, 2004; and August 18, 2004, Mr. Crum was absent due to illness, but did not notify the employer until after the scheduled start of his shift. On most or all of these occasions Mr. Crum failed to set his alarm clock. On May 4, 2004, Mr. Crum left work early for reasons not documented by the employer. On May 19, 2004, Mr. Crum was absent due to an arrest and incarceration.

Mr. Crum had received warnings regarding his attendance as follows. On April 8, 2004, Mr. Crum received an oral warning. On April 28, 2004, Mr. Crum received a second oral warning. On June 8, 2004, Mr. Crum received a written warning. In August 2004, Mr. Crum received a written warning that he was at twelve to thirteen points, and could be discharged. The employer admonished Mr. Crum to improve his attendance. On January 18, 2004, Mr. Crum received a written warning that he was at twelve points and could be discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Crum was discharged for misconduct in connection with his employment based on excessive unexcused absences.

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(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.

Because the claimant was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Courts are to construe the provisions of the unemployment compensation law liberally, and to interpret the unemployment compensation law's disqualification provisions strictly to further the purpose of the law. See Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85 (Iowa 1997)

In order for Mr. Crum's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the employer must show that Mr. Crum's *unexcused* absences were excessive. See 871 IAC 24.32(7). The administrative law judge applies Iowa law, rather than the employer's attendance policy, when deciding whether an absence was an excused absence. The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32-8. Absences related to issues of personal responsibility such as lack of transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Mr. Crum's final absence on February 17, 2005 was unexcused. Though the absence was due to illness, it was not reported to the employer prior to the scheduled start of the shift as required by the employer's attendance policy. The evidence further establishes that the following absences were also unexcused. April 24, 2004; May 15, 2004; July 13, 2004; August 12, 2004; and August 18, 2004. Most of these absences were due to illness, but were unexcused because the illness was not properly reported pursuant to the employer's attendance policy. Despite the fact that the law considers absences due to illness *improperly* reported to the employer to be *unexcused* absences, the administrative law judge cannot ignore that most of the absences were due to illness. Despite the fact that the employer had warned Mr. Crum that his accrued points subjected him to possible termination, the administrative law judge notes that there was a six-month gap between Mr. Crum's final unexcused absence on February 17, 2005 and the most recent unexcused absence on August 18, 2004. Under the circumstances, the administrative law judge concludes that Mr. Crum's unexcused absences were not excessive. Accordingly, no disqualification will enter.

DECISION:

The representative's decision dated March 16, 2005, reference 01, is reversed. The claimant was discharged from his employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

jt/s