IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SALVADOR H LARA
Claimant

FARMLAND FOODS INC
Employer

APPEAL NO. 12A-UI-01443-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/01/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Farmland Foods (employer) appealed a representative's February 2, 2012 decision (reference 01) that concluded Salvador Lara (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 1, 2012. The hearing was then rescheduled for March 19, 2012, to obtain an interpreter. The claimant participated personally through Patricia Vargas, Interpreter. The employer participated by Becky Jacobsen, Human Resources Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 4, 2009 as a full-time production worker. The claimant signed for receipt of the employer's handbook in November 2009. The employer did not issue the claimant any warnings during his employment.

The claimant was on medical leave from October 8, through 26, 2011, due to an injury to his right arm. The claimant went to El Salvador on vacation on October 26, 2011. While in El Salvador the claimant had a heart attack and was hospitalized from October 26 through November 1, 2011. His physician told him not to travel for a period of time but did not provide him with a note to that effect. The claimant was too sick to report the information to the employer but the claimant's family in the United States relayed some information to the employer.

On November 19, 2011, the claimant was able to fly back home. He provided all his medical documentation to the employer regarding his hospitalization. On November 21, 2011, he saw one doctor who said he was fine. On November 29, 2011, the claimant sought a second opinion because he was feeling very sick. The second doctor restricted him from working.

On December 7, 2011, the employer mailed a letter to the claimant indicating he had until December 14, 2011, to provide medical information for October 26, 2011, or he would be terminated. The claimant was very sick but provided the information he had. The employer did not terminate on December 14, 2011.

On December 27, 2011, the employer called the claimant while he was sick and asked for more medical information from his time in El Salvador. The claimant told the employer that he did not have it but would try to obtain the medical information. The employer sent the claimant a letter on December 27, 2011, terminating his employment for failure to provide medical information for the time period between November 1 and November 29, 2011. The claimant was released to return to work on January 1, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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(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.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer terminated the claimant on December 27, 2011, for failure to provide November 2011, documentation by December 14, 2011. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's February 2, 2012 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs