

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAIME R RIVAS URBINA
Claimant

APPEAL NO. 11A-UI-12973-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

**OC: 08/14/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Jaime R. Rivas Urbina filed an appeal from an unemployment insurance decision dated September 7, 2011, reference 01, that denied unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held November 9, 2011, with Mr. Rivas Urbina participating. Becky Jacobsen took part in the hearing for the employer, Farmland Foods, Inc. Exhibit D-1 was admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Jaime R. Rivas Urbina was employed by Farmland Foods, Inc. from April 11, 2007, until he was discharged August 17, 2011, for poor attendance. The final incident had occurred on August 12, 2011, when Mr. Rivas Urbina was tardy because of car problems. He had been tardy a total of 11 times in the past 12 months and had received four warnings because of his attendance.

Mr. Rivas Urbina does not read English well. He attempted to contact the Agency when he first received the fact-finding decision issued on September 7, 2011. After learning how to file an appeal, he filed one on September 30, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. The administrative law judge accepts it as timely for the sole reason that the evidence establishes that Mr. Rivas Urbina has a limited ability to read English.

The remaining question is whether the separation was a disqualifying event. It was.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence in the record establishes that Mr. Rivas Urbina was tardy on 11 occasions in the 12 months leading up to his discharge and that he had received several warnings about his attendance. This evidence is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

DECISION:

The unemployment insurance decision dated September 7, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw