

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUTH E ZAVALA**  
Claimant

**APPEAL NO. 10A-UI-16486-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 10/24/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 22, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 18, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Becky Jacobson participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production employee from January 8, 2003, to October 29, 2010. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and could be discharged under the employer's no-fault attendance policy: (1) if they accumulated 12 attendance points in a 12-month period, or (2) if they received a third attendance warning in a 24-month period for accumulating 10 attendance points.

The claimant was discharged on October 29, 2010, after receiving a fourth attendance warning in a 24-month period. The final attendance point was given when the claimant called in properly and reported that she was sick and unable to work on October 26, 2010. She provided a doctor's excuse but still was given points that put her over the 10 points necessary for issuing a written warning.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides: "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." 871 IAC 24.32(8) provides: "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 evidence fails to show excessive unexcused absenteeism or a current act of misconduct as the final absence was for legitimate illness verified by a medical excuse, and was properly reported.

**DECISION:**

The unemployment insurance decision dated November 22, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css