

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL TORRES BLANCO
Claimant

APPEAL NO. 11A-UI-03999-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 02/06/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 29, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 21, 2011. The claimant participated personally. The employer participated by Ms. Jessica Garcia, Assistant Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Gabriel Torres Blanco was employed by Farmland Foods from November 4, 2009 until March 8, 2011 when he was discharged for exceeding the permissible number of attendance infractions allowed under company policy. Mr. Torres Blanco was employed as a full-time production worker and was paid by the hour.

Mr. Torres Blanco was discharged after he failed to provide medical documentation required to authorize his absence from work for a medical leave of absence during the period February 14, 2011 through February 21, 2011. Mr. Torres Blanco had requested a leave of absence to visit a sick relative in Mexico. Prior to leaving the claimant was specifically informed that he must provide medical documentation to verify that the relative was ill and that it was necessary for Mr. Torres Blanco to be present. The employer supplied a form for the claimant to have completed and provided a fax number to Mr. Torres Blanco so the information could be easily forwarded back to Farmland Foods.

Upon his return Mr. Torres Blanco did not have the required documentation. The employer allowed the claimant additional time to obtain the documentation but Mr. Torres Blanco failed to do so.

Because of the attendance points that were accumulated due to the lack of medical documentation and because the claimant had left early on February 22 and had failed to provide notification of an absence on February 23, 2011, the claimant had exceeded the permissible number of attendance points and was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

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.

The evidence in the record shows that Mr. Torres Blanco was specifically informed at the time that he requested a medical leave of absence that he would be required to provide medical documentation supporting his need to be absent from work. The employer went to the extra

steps of providing a form for the claimant to take to Mexico and providing a fax number so that the information could be easily transmitted back to Farmland Foods. Although the claimant took time away from work to go to Mexico he did not obtain the required documentation. In an effort to keep Mr. Torres Blanco as an employee, Farmland Foods allowed the claimant sufficient additional time to obtain the documentation. However, the claimant failed to do so. The claimant did not contact his spouse who was in Mexico with the ill father-in-law and did not contact directory services in an attempt to directly contact the medical facility to obtain the necessary documentation. Because of the lack of documentation the claimant was assessed attendance infraction points. In addition to the points assessed for his failure to obtain the documentation, the claimant had also left work early on one occasion and had failed to provide notification on another occasion causing him to exceed the level of attendance acceptable to the employer. The claimant was aware of the employer's attendance requirements but did not provide the documentation necessary to verify his need to be absent. Benefits are withheld.

DECISION:

The representative's decision dated March 29, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance 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 and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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