

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA J DENTON
Claimant

APPEAL NO. 09A-UI-02974-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS
Employer

OC: 01/25/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Melissa J. Denton filed a timely appeal from an unemployment insurance decision dated February 20, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held March 16, 2009 with Ms. Denton participating and being represented by William Cahill, Attorney at Law. Human Resources Manager Ms. Michelle Reyburn and Plant Nurse Ann Morath participated for the employer, Farmland Foods.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Melissa J. Denton was employed by Farmland Foods from September 8, 2008 until she was discharged January 15, 2009. Ms. Denton had performed light-duty work on January 8 and 9, 2009. She had clocked in before putting on her uniform because she did not need to wear the uniform while performing the light-duty work.

Understanding that she was to report first to the nurse on January 12, 2009, she clocked in again without putting on her uniform. Plant Nurse Ann Morath sent Ms. Denton back to the locker room to change into her production activity uniform and then sent her to her normal department. She was suspended that afternoon for “theft of time” for having clocked in before changing into her work uniform. She was discharged on January 15 for this offense as well as for clocking in without leaving her coat and purse in her locker on the days of light duty the prior week.

Farmland Foods is an Illinois employer that did not report Ms. Denton’s wages to Iowa.

REASONING AND CONCLUSIONS OF LAW:

In this case, the administrative law judge determines only eligibility for benefits. Since Farmland Foods is an Illinois employer, it must look to its comparable state Agency to determine its liability, if any, for benefits paid to Ms. Denton.

The question is whether the evidence establishes that Ms. Denton was discharged for misconduct in connection with her employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

Ms. Morath testified that she had told Ms. Denton on January 9 that she would be returning to her normal duties on Monday, January 12. Ms. Denton, however, understood that she was to report directly to Ms. Morath and that only then would her workstation for the day be determined. The administrative law judge concludes that at worst this was a miscommunication between the two, not a willful act of misconduct. Under Iowa law no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated February 20, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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