

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GEORGE O GABRIEL**  
Claimant

**APPEAL NO. 14A-UI-06058-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 05/11/14  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated June 3, 2014, reference 01, that held he was discharged for excessive unexcused absenteeism and tardiness on May 14, 2014, and benefits are denied. A hearing was held on July 7, 2014. The claimant participated. Becky Jacobsen, HR manager, participated for the employer. Employer Exhibits 1-5 were received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on March 24, 2010 and last worked as a full-time production employee in the rendering department on May 14, 2014. The claimant received the employer no fault attendance policy that provides for termination when an employee accumulates 12 points within a 12-month rolling period. If an employee reports an absence due to illness and provides a doctor excuse, only one point is given rather than two.

As of January 17, 2014 claimant had no attendance points. He called the employer about an absence due to his wife's emotional illness (depression) on February 17, and he provided no doctor excuse. He called in a personal day absence on March 5 and a family (daycare) absence on March 31. The employer issued claimant a verbal (written documented) warning on April 14 that he was at five points as of March 31.

Claimant reported an absence for April 2 when he could not get daycare for his children, and he was late to work on April 4 due to oversleeping. Claimant reported an absence due to childcare issues on May 5 and May 6. The employer issued claimant a written warning on May 13 that he was at nine and one-half attendance points as of May 5. It issued a final warning the same day for reaching eleven and one-half points through May 6. He signed for both warnings on May 13.

Claimant was late three minutes on May 10. The employer was considering what action it would take when claimant was late to work 12 minutes on May 14 due to over-sleeping. The employer discharged claimant for accumulating twelve and one-half attendance points in violation of its attendance policy.

Claimant objects to the termination because the employer did not timely warn him he was nearing the 12-point discharge threshold.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Admin. Code r. 871-24.32(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 administrative law judge concludes employer established misconduct in the discharge of the claimant on May 14, 2014, for excessive "unexcused" absenteeism/tardiness.

Although the employer has a no fault attendance policy, it relied upon sufficient unexcused absences and tardiness that does constitute job disqualifying misconduct. It also provided claimant warnings that he was rapidly accumulating attendance points to reaching the 12-point threshold for termination. Missing work due to his wife's illness and/or child care problems is not excused. Claimant could have sought to reduce attendance points by having a doctor excuse that he needed to stay home to care for his wife but did not do so.

Claimant has some obligation to keep track of his attendance points to where he cannot complain he didn't get the final warning soon enough to stave off termination. He rapidly accumulated attendance points from May 5 for non-excusable reasons.

**DECISION:**

The decision of the representative dated June 3, 2014, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on May 14, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs