

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILIP DAU
Claimant

APPEAL NO: 11A-UI-13176-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 09-04-11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 27, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 1, 2011. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Becky Jacobsen, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Farmland Foods from June 19, 2009 to September 2, 2011. The employer uses a 12-point, no fault, rolling 12-month attendance policy and employees are terminated upon reaching their 12th point. Absences drop off after 12 months. The claimant was absent due to properly reported illness accompanied by a doctor's excuse December 20, 2010, and received one point; he left early March 17, 2011, and received one point; he was a no-call no-show March 21, 2011, and received three points; he was absent due to properly reported illness without any medical documentation June 27 and 28, 2011, and received two points for each of those absences; he was absent due to properly reported illness with a doctor's excuse July 22, 2011, and received one point; and was absent due to illness without medical documentation August 19, 2011, placing him at 12 attendance points and consequently his employment was terminated September 2, 2011, for excessive absenteeism. The claimant received a written warning for attendance when he reached eight attendance points December 23, 2010; a verbal warning for attendance when he reached five attendance points March 30, 2011; a written warning for attendance when he reached eight attendance points April 4, 2011; a final written warning for attendance when he reached ten attendance points May 18, 2011; and another final written warning for attendance when he again reached ten attendance points August 16, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant left early March 17, 2011, and received one point and was a no-call no show March 21, 2011, and received three points for a total of two unexcused absences and four points. The remainder of the claimant's 12 points were due to properly reported illness, two accompanied by medical excuses, and three without medical documentation. Employees may be too ill to go to work but not so ill as to require the attention of a physician. While doctor's excuses would have reduced the number of attendance points the claimant received, it is not always practical to see a doctor for a brief illness. Because the claimant's final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The September 27, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs