

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKY JEPSEN**  
Claimant

**APPEAL NO. 07A-UI-09825-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 09-23-07 R: 01**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 17, 2007, 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 6, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing. 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 October 29, 2004 to August 28, 2007. He was discharged for exceeding the allowed number of attendance points. The employer uses a no-fault attendance policy. Employees receive one-half point if they are less than two hours tardy or leave two hours early; one point for an absence due to illness with a doctor's excuse; two points for an absence without a doctor's note; and three points for a no-call, no-show. Points drop off after one year. On January 16, 2007, the claimant left early and received one-half point; on January 26, 2007, he was absent due to illness but did not have a doctor's excuse and received two points; on February 16, 2007, he left early and received one-half point; on March 9, 2007, he was absent due to illness but did not have a doctor's excuse and received two points; on March 27, 2007, he left early and received one-half point; on March 30, 2007, he was absent due to illness and provided a doctor's note and received one point; on April 4, 2007, he left more than two hours early and received one point; on August 10, 2007, he was absent due to illness and provided a doctor's note and received one point; and on August 15, 20, 23, and 24, 2007, he was absent due to illness but did not have a doctor's excuse and received two points. The claimant received a verbal warning March 29, 2007, after accumulating five points and the employer prepared a written warning for him August 14, 2007, when he reached eight points but did not give it to him before he reached 12 points; so, consequently, it gave him another chance August 22, 2007, when he obtained

12 points. The claimant was then absent August 23 and 24, 2007, due to properly reported illness and the employer terminated his employment August 28, 2007.

**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 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(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). Because the final absence was related to properly reported illness, even if the claimant did not have a doctor's excuse, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The October 17, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw