

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORENA HENRIQUEZ

Claimant

APPEAL NO: 10A-UI-11277-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC

Employer

OC: 05-16-10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 30, 2010, 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 September 28, 2010. The claimant participated in the hearing. Becky Jacobson, 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 2, 2010 to June 22, 2010. She was discharged for violating the employer's attendance policy during her probationary period. The claimant was absent June 10, 2010, because she had to go to the bank to try to secure a loan. She called the employer June 10, 2010, and notified it she would not be in because she needed to take care of personal business. She did not ask ahead of time because she was afraid the employer would deny her permission to do something which she had to do and that if she went after being denied she would make it worse by being insubordinate. The employer gave her a written warning and extended her probationary period by 20 days to give her an opportunity to show a good faith effort on her attendance. The warning states that failure to show good attendance will result in termination. The claimant's son has a club foot and spina bifida and has suffered amputations as a result. When the claimant returned home from work June 18, 2010, one of her son's toes looked bad but she thought it would get better over the weekend. Instead it began to turn purple and she believed it was getting infected. She took him to his doctor in Omaha Monday, June 22, 2010. She was not sure if she would lose her job but had no choice but to take her son to see his physician after calling in to report she would not be at work June 21, 2010. The employer terminated her employment June 22, 2010.

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(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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the proportion of the claimant's absences in comparison to working days, which was 16 to 2, was not good, the claimant's absences were due to good cause reasons. She had an appointment to try to secure a loan that she needed to attend and felt she would not be granted permission to go to the meeting if she asked the employer ahead of time and her last absence was due to the serious illness of her son. Although it is unfortunate that these absences occurred during the probationary period, unemployment law does not consider probationary or trial periods of employment in making decisions about disqualifying job misconduct. The claimant's first absence may have been questionable even though necessary. The second absence, however, was due to the properly reported illness of her son, and as such no final or current incident of

unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

DECISION:

The June 30, 2010, 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