

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALENTINE EMILIO
Claimant

APPEAL NO: 14A-UI-05594-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 04/27/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2014, 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 June 24, 2014. The claimant participated in the hearing. Terry Vrieze, Assistant Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work and whether he was on a leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant requested and was given a leave of absence February 4, 2014 and was expected to return April 14, 2014, because his wife and three-year-old son lived in Uganda and were forced to flee through southern Sudan where his wife, son and others were ambushed and his wife was killed but saved their son. The claimant needed to go to Africa and care for his son and make arrangements for him and therefore requested and was granted a leave of absence. He was instructed to maintain monthly contact with the employer and called it in February, March and April 3, 2014, at which time he told the employer his family still required assistance and did not give a return to work date. Communication from Africa was somewhat difficult for the claimant and he was unable to call the employer right before his scheduled return date and ask for a short extension for that reason. The claimant flew into Des Moines Thursday, April 24, 2014, but did not have a ride to Denison and consequently had to wait at the airport until a friend had a day off on the weekend and could pick him up.

The employer determined the claimant was a no-call no-show April 14, 15 and 16, 2014, and sent him a letter notifying him that his employment was terminated. The claimant did not have a chance to go through all of his mail when he returned and did not see the termination letter before he called the employer and told it he was ready to return to work Monday, April 28, 2014. He then learned of his termination and took the letter to his union the day he received it. After

going through his union and explaining the situation to the union and employer the employer agreed to reinstate the claimant May 19, 2014, but he lost his position as a machine operator and returned as a miscellaneous worker.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

The claimant requested and was granted a leave of absence from February 7 through April 13, 2014, to return April 14, 2014. He contacted the employer each month from Africa but communication was problematic. When he last called the employer April 3, 2014, he stated his family still needed assistance and could not give a return date. The claimant's wife and others were ambushed and slaughtered in southern Sudan and while his wife managed to save the life of their three-year-old child, the claimant's presence was required in Africa to make arrangements for his son and help his family during this time of tragedy. While ideally the claimant should have called the employer and asked for an extension of his leave prior to April 14, 2014, under these circumstances it is understandable why he was unable to do so. He never intended to quit his job and contacted the employer immediately upon his return to Denison. Because the claimant had no intention of quitting his job and his actions do not rise to the level of disqualifying misconduct consisting of substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability, benefits are allowed

DECISION:

The May 20, 2014, 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