

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY POPE**  
Claimant

**APPEAL NO. 08A-UI-07686-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 07-06-08 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 18, 2008, 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 9, 2008. 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 December 15, 2006 to July 2, 2008. The employer uses a no-fault rolling calendar year attendance policy and employees are terminated upon reaching 12 points. The claimant was absent due to properly reported illness February 20, 2007, and received one point; she left early March 22, 2007, and received one-half point; she was absent due to properly reported illness April 17, 2007, and received one point; she was absent due to illness May 8, 2007, and received two points; she left early May 18, 2007, and received one-half point; she left early July 5, 2007, and received one-half point; she was absent due to properly reported illness July 24, 2007, and received one point; she was absent due to properly reported illness August 2, 2007, and received one point; she left early September 22, 2007, and received one point; she was absent due to properly reported illness December 28, 2007, and received one point; she was absent due to properly reported illness January 21, 2008, and received one point; she was absent due to properly reported illness February 23, 2008, and received one point; she left early March 4, 2008, and received one point; she left early June 9, 2008, and received one point; she was absent due to properly reported illness June 17, 2008, and received one point; she left early June 19, 2008, and received one point; she was absent due to properly reported illness June 23, 2008, and received one point; she was absent due to properly reported illness June 24, 2008, and received one point; she was absent due to properly reported illness June 27, 2008, and received one point; she had a dental appointment June 30, 2008, and received one point; and she was absent due to a properly reported illness with a medical excuse July 1 and 2, 2008, and the employer terminated her employment for exceeding the allowed number of attendance points. She received a verbal warning May 24, 2007, after accumulating five attendance points; a written

warning October 6, 2007, after accumulating eight attendance points; a final written warning February 4, 2008, after accumulating 10 attendance points; a final written warning March 11, 2008, for accumulating 10 attendance points; and a final written warning June 26, 2008.

**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). While the claimant had several absences during her employment, most were due to properly reported illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The August 18, 2008, 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