IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ALBERTO JAIME
Claimant

FARMLAND FOODS INC
Employer

APPEAL NO: 08A-UI-08143-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/10/08 R: 01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Alberto Jaime (claimant) appealed a representative's September 3, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Farmland Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 12, 2008 in Carroll, Iowa. The claimant participated in the hearing and was represented by Reed Reitz, attorney at law. Becky Jacobsen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 4, 1999. He worked full time as a production worker on the night shift, beginning either at 3:00 p.m. or 4:00 p.m. His last day of work was July 11, 2008. The employer discharged him on August 13, 2008. The reason asserted for the discharge was excessive absenteeism.

The employer's attendance policy provides for discharge at 12 points. Prior to June 30 the claimant had four points for personal illness and three points for a no-call, no-show. On June 30 the claimant's 18-year old daughter was in the hospital for an appendectomy. He missed three days of work. He had called into the employer and by the employer's response that they would see him when he came in assumed that if he had medical documentation he would only be assessed at most two more points. However, since the daughter was no longer a minor, the employer in fact assessed him six points, thus bringing him to 13 points. On July 8 this was explained to him at the time he was being give a final warning. He commented at the time that he would likely miss another time anyway as he was going to take his daughter back to the doctor to get her stitches out. The claimant in fact did call in an absence on July 9 for that purpose. The employer's human resources department did not become aware of that absence until about July 15.

On July 13 the claimant received a call that his sister in Mexico had suffered a heart attack on July 10 and was in the hospital. He therefore determined to drive to Mexico to be with her. While en route, the claimant called the employer on July 14 to advise he was going to be off work and why. Ms. Jacobsen, the human resources manager who spoke to the claimant, responded that they would review the documentation and situation when he returned. The claimant's sister was in the hospital until about August 4, but the claimant stayed at home with her for some days before returning to Iowa on August 10. He waited until August 13 to attempt to return to work, at which time he was informed that he was being discharged due to his attendance.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absenteeism arising out of matters of purely personal responsibility is generally not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). An exception has been recognized in the case of the need to care for a sick infant or small child, but that is not the situation presented here. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991). While the claimant may not have realized until it was too late that he would be assessed full points for his 18-year old daughter's hospitalization, as of July 8 he did realize that any such further absences would result in his discharge. His absences after that point, while for important personal reasons, were not unavoidable or excused as being due to his own personal illness or other grounds that necessitated that he and he alone attend to. The claimant had previously been warned that future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's September 3, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 10, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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