

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M SPENCER**

Claimant

**APPEAL NO. 07A-UI-11039-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**

Employer

**OC: 11/04/07 R: 01  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Tina Spencer, filed an appeal from a decision dated November 27, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 12, 2007. The claimant participated on her own behalf. The employer, Farmland Foods, participated by Human Resources Director Becky Jacobsen.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Tina Spencer was employed by Farmland Foods from August 16 until November 6, 2007, as a full-time production worker. She was still on probation and subject to discharge for absenteeism or other policy violations.

The claimant was on light duty and was to report to the nurse prior to every shift to have her hand iced and receive medication. The procedure for her to follow was to use her magnetic card to “swipe in” at the gate, go to the locker room to change into her work clothes, report to the nurse, get her medication and ice treatment, then report to her workstation by her scheduled start time.

On November 3, 2007, she was scheduled to work at 6:30 a.m. She swiped in at the gate but did not swipe in at her workstation. She reported to her supervisor she had arrived at 6:30 a.m. and the time records were modified. On November 5, 2007, the nurse asked Human Resources Manager Becky Jacobsen whether Ms. Spencer was still employed because she had been tardy on Saturday, November 3, 2007. The nurse reported the claimant arrived in her office, urging her to hurry up because she was late.

A check of the time records showed the claimant had swiped in at the gate at 6:29 a.m. and it was not possible for her to have walked a block to the building, changed her clothes, reported to

the nurse and then to her workstation in one minute. She was discharged for dishonesty in reporting an incorrect start time to her supervisor.

### **REASONING AND CONCLUSIONS OF LAW:**

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 claimant stated that reporting to the nurse's office by 6:30 a.m. would mean she was on time, as the treatment was considered an "on the clock" activity for her light duty. However, she could not explain why, if that were the case, there was no time clock in the nurse's office. It does not explain why she told the nurse to hurry up because she was late when she arrived on November 3, 2007. Lastly, it does not explain why, if she regularly followed this procedure of receiving her treatment at the time her shift was scheduled to start, she did not show as being tardy on any other occasion.

The administrative law judge does not find the claimant's testimony to be credible. It is significant that November 3, 2007, was the only day she had failed to swipe in as required, in a timely manner. It appears she was late, she knew she was late, and deliberately did not swipe in at her workstation to avoid showing on the time records as late. She then misrepresented her start time to her supervisor, again, so she would not appear to be late.

This is not merely tardiness but dishonesty in connection with her work. It is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of November 27, 2007, reference 01, is affirmed. Tina Spencer is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw