IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

NICHOLAS L WILSON
Claimant

FARMLAND FOODS INC
Employer

APPEAL NO. 09A-UI-08823-SWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 05/10/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 12, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 7, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Becky Jacobson participated in the hearing on behalf of the employer. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from October 1, 2006, to May 8, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if subject to a third final written warning in a 24-month period. Under the employer's no fault attendance policy, points were assessed for unscheduled absence, tardiness, or leaving work early. A final warning was issued after 10 attendance points in a 12-month period. Points drop off after a year.

The claimant received a final written warning on February 4, 2008, for having 10 points. He received a second final written warning on August 14, 2008. On February 16, 2009, the claimant received a written warning informing him that he was at 8.5 points at that time. Nearly all the absences the claimant received were due to properly reported personal or family member illness, and many were excused by a doctor's excuse, including absences on March 13, April 27, and April 28. After April 28, the claimant was unaware that he was at 9.6 points.

The claimant and his wife were having marital problems. On May 7, 2009, the claimant's wife called him at work and insisted he come home. She told him that if he did not come home right away, she would be gone by the time he came home. The claimant talked to both of his supervisors and got permission to leave work earlier. He was not told and was not aware that if left work early, it would put him at 10 points and subject him to termination.

When the claimant reported to work on May 8, 2009, he was discharged under the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. Nearly all the attendance points the claimant received were for personal illness or family member illness, and a doctor excused many of them. The claimant left work with permission from his supervisors on May 7 and did not know his job was in jeopardy at the time. He believed there was an urgent situation that he had to take care of.

DECISION:

The unemployment insurance decision dated June 12, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw