

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PERRY A STALEY**  
Claimant

**APPEAL NO: 10A-UI-10986-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 06/06/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant appealed a representative's July 27, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on September 23, 2010. The claimant participated in the hearing. Jessica Garcia, the human resource assistant manager, 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**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 26, 2009. The claimant worked full time in production.

The claimant was diagnosed with a medical condition that required long-term treatment. As a result of the claimant's treatment, he was unable to work. The last day the claimant worked for the employer was September 8, 2009. The claimant then went on an unpaid medical leave. Even though the claimant received short-term disability benefits, the employer required him to call the employer every week to report he was unable to work. The employer also required the claimant's treating physician to send the employer bi-weekly and or monthly reports about the claimant's medical status.

The claimant received weekly treatments on Friday. The treatments affected him to the extent that sometimes he was unable to get out of bed until Thursday. There were some weeks the claimant did not contact the employer. He either forgot was not able to contact the employer. The employer sent the claimant a letter on January 8, 2010, reminding him that he needed to call the employer every week, either Sunday night or Monday. The employer also reminded the

claimant that in accordance with the employer's policy if an employee did not call or report to work for three consecutive days, the employer considered the employee to have voluntarily quit or abandoned his employment. The claimant understood he had to personally contact the employer; he could not have someone call on his behalf.

The employer did not have a record that the claimant called the week of February 7. The claimant called on February 15 to report he was still unable to work. The claimant did not call the employer on February 22, 23 or 24. Although the claimant believed he called February 25 or 26, the employer sent him a letter on February 26, informing him that the employer considered him to have voluntarily quit when he did not contact the employer for three consecutive days. On February 25, the claimant received notice he was eligible for long-term disability benefits in March.

In April 2010, the claimant's physician released him to work without any restrictions.

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

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant voluntarily quit his employment or even intended to quit. The employer initiated the employment separation on February 26, 2010.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer ended the claimant's employment when he did not call the employer on February 22, 23, or 24 to again let the employer know he was still unable to work. Since there were previous weeks the claimant had not called, the claimant had no understanding that if he forgot or was unable to call the employer this omission would result in the termination of his employment. Even though the employer had business reasons for requiring the call each week, this request was not totally reasonable. The employer already required his treating physician to send in bi-weekly and or monthly status reports and knew his treatment could require him to be off work for a year. While the claimant should have informed the employer there were weeks he could not function until Wednesday or Thursday after he had a Friday treatment, he did not. This demonstrates poor judgment, but not work-connected misconduct. As of June 6, 2010, the claimant is qualified to receive benefits.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. When the claimant's physician released him to work in April 2010 without any restrictions, the claimant was able to and available for work.

**DECISION:**

The representative's July 27, 2010 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead he was on an unpaid leave of absence. The employer discharged him for business reasons on February 26, 2010, but the claimant did not commit work-connected misconduct. The claimant was able to and available for work when his physician released him to work in April. As of June 13, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to him.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css