

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BAKULUK M MONYTUNG
Claimant

APPEAL NO. 12A-UI-11294-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 08/19/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 17, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 15, 2012. Claimant participated through interpreter Magok Alim. Employer participated through Jessica Garcia. Employer's Exhibit 1 was received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker and was separated from employment on April 25, 2012. He was a no-call, no-show on April 16, 2012. He called in but could not provide documentary evidence of the call, because he has a prepaid phone. His attempt to show his supervisor the phone was rebuffed. He was warned in writing about attendance on April 10, 2012; January 27, 2012; and October 22, 2011. He was also absent on September 20, 2011 (ill, no documentation); January 20, 2012 (ill, no documentation); February 3, 2012 (left early, with notice to and approval from his supervisor, for a lawyer's appointment); and March 30, 2012 (ill, no documentation). The employer policy assigns one attendance point if an employee provides medical documentation, two points if they do not, and no points if granted Family Medical Leave Act (FMLA) status. The employer gave him FMLA paperwork, which was not returned. He received and understood the policy, even though it was written in English and not interpreted.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

The employer has not established that claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. Because his absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred that establishes work-connected misconduct and no disqualification is imposed.

DECISION:

The September 17, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw