

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JULIE C MILLER
2442 UMBRELLA RD
MANILLA IA 51454

FARMLAND FOODS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11041-JTT
OC: 10/18/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Farmland Foods filed a timely appeal from the October 18, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 10, 2005. Human Resources Coordinator Becky Jacobsen represented the employer and provided additional testimony through Plant Manager Ron Canaday. Claimant Julie Miller did not respond the hearing notice and did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Julie Miller commenced her full-time employment as a billing clerk with Farmland Foods on November 17, 1999 and continues in the employment. On October 5, 2005, Plant Manager Ron Canaday

placed Ms. Miller on a disciplinary suspension. Ms. Miller returned to the employment on October 12, 2005, with the same conditions of employment.

Mr. Canaday decided to suspend Ms. Miller after receiving an e-mail message from Ms. Miller on October 5, 2005. In the e-mail message, Ms. Miller indicated that she was refusing to substitute for a coworker in the employer's customer service department on Friday, November 25, 2005. Ms. Miller did not usually work in the customer service department, but had substituted in that department for two and a half years. At a meeting in March or April, Ms. Miller and the coworker in the customer service department had both requested to be off work on Friday, November 25, 2005, the day after the Thanksgiving holiday. When Ms. Miller and the coworker could not come to an agreement as to who would have the day off, Mr. Canaday advised Ms. Miller that she would need to work and the coworker would be granted the day off. Ms. Miller's refusal, and the disciplinary suspension, came almost two months before the shift that needed to be covered.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Miller was suspended for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. See 871 IAC 24.32(9). The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge or suspension of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record indicates that Ms. Miller never actually failed to perform a specific task or follow a reasonable instruction from the employer. The employer put the cart before the horse and disciplined Ms. Miller long before learning whether Ms. Miller would indeed fail to appear for the shift on November 25, 2005. Ms. Miller was suspended for no disqualifying reason and is eligible for benefits for the period of the suspension, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's decision dated October 18, 2005, reference 01, is affirmed. The claimant was suspended for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/tjc