

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSEPH AKOL Claimant	68-0157 (9-06) - 3091078 - EI
FARMLAND FOODS INC Employer	APPEAL NO. 11A-UI-04705-ET ADMINISTRATIVE LAW JUDGE DECISION
	OC: 03-06-11 Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 30, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 5, 2011. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Robert Tallang, interpreter, stayed throughout the hearing in case the claimant called in during the hearing. Mary Spreng, human resources assistant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Farmland Foods from June 16, 2010 to March 8, 2011. He was discharged for violating the employer's attendance policy. The employer uses a no-fault policy and employees are discharged upon reaching 12 points. Employees are assessed two points per absence unless they have a doctor's excuse, in which case they receive one point. If they are more than two hours tardy or leave more than two hours early, they receive one point. If it is less than two hours, they receive one-half point. A no-call, no-show results in three points. The claimant was absent due to personal business September 17, 2010, and received two points; he was a no-call, no-show September 27, 2010, and received three points; he was absent due to personal business October 4, 2010, and received two points; he left more than two hours early December 22, 2010 and February 1, 2011, and received one point for each occurrence; he was absent due to illness February 23, 2011, without a medical excuse and received two points; he was absent due to illness February 24, 2011, with a medical excuse and received one point; he left early more than two hours February 25, 2011, and received one point; he was absent due to illness March 3, 2011, without a medical excuse and received two points; and he was absent due to illness March 4, 2011, with a medical excuse and received one point. The employer issued the claimant a verbal warning October 1, 2010, when he reached five points; he received a written warning December 29, 2010, when he reached eight points; and the employer issued the claimant a final written warning March 7, 2011, for his February 23 and 24, 2011, absences. On March 8, 2011, the employer told the claimant it would review his attendance record and doctor's notes and let him

know his employment status. Later that day, he was notified his employment was terminated for exceeding the allowed number of attendance points.

REASONING AND CONCLUSIONS OF LAW:

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

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and even though the claimant violated the employer's attendance policy, no denial of benefits can be imposed. Therefore, because the claimant's last absence was due to properly reported illness, benefits must be allowed.

DECISION:

The March 30, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw