

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN MAGANA
Claimant

APPEAL NO: 11A-UI-02769-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 05/30/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 23, 2011 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the April 27 hearing. Becky Jacobson, the human resource manager, appeared on the employer's behalf. Patricia Vargas interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2010. He worked full time. When the claimant started his employment, he received a copy of the employer's attendance policy. The employer informed employees they can be discharged if they accumulate 12 attendance points in a rolling calendar year. The employer has a no-fault policy and assesses a point for any absence.

From July 14 through December 3, 2010, the claimant received points for calling in sick two times; reporting to work late four times, taking a day off for personal business and leaving work early or reporting to work late several times. On December 4, the employer gave the claimant his final warning and told him he had accumulated ten attendance points.

On January 3, the claimant was three hours late for work. Since he was more than an hour late for work, he received one point for reporting to work late. On January 19, the claimant had a toothache and asked if could leave work early. Since the claimant left before working more than half of his scheduled shift, he received a point for leaving work early. After he left work on January 19 he had accumulated 12.5 attendance points.

The claimant went to a dentist on January 19. He had an infected tooth. The dentist gave the claimant medication so he could sleep. The claimant did not call or report to work on January 20 because he overslept after taking the prescribed pain medication. On January 21, the claimant called in sick. The claimant reported to work on January 24. The employer discharged the claimant because when he left work on January 19, he had accumulated 12.5 attendance points.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 facts establish the employer had justifiable business reasons for discharging the claimant. Even though the claimant accumulated 12.5 attendance points, he left work with permission on February 19 because he had toothache from an infected tooth. The claimant went to a dentist and learned he had to wait until the infection was under control before the dentist could do anything else for him. The claimant could have easily overslept after he took medication for pain. He had not planned to leave work early on January 19 or to have overslept and not call or report to work on January 20.

Even though the employer had justifiable business reasons for discharging the claimant, he did not commit work-connected misconduct when he left work on January 19 because of a dental issue. Absences after January 19 were not considered when the employer discharged him because as of January 19 he accumulated 12.5 attendance points. Since the claimant did not commit work-connected misconduct, he is qualified to receive benefits as of January 23, 2011.

Since the employer is not one of the claimant's base period employers, the employer's account will be charged during the claimant's current benefit year.

DECISION:

The representative's February 23, 2010 determination (reference 04) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of January 23, 2011, the claimant is qualified to receive benefits,

provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css