

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

JAMES E MANSFIELD JR
PO BOX 26
MANILLA IA 51454 0026

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

Appeal Number: 06A-UI-03026-DWT
OC: 02/12/06 R: 01
Claimant: Respondent (2)

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
Section 96.3-7- Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Farmland Foods, Inc. (employer) appealed a representative's March 1, 2006 decision (reference 01) that concluded James E. Mansfield, Jr. (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Denise Baldwin, the human resources manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 11, 1991. The claimant worked as a full-time production worker. The claimant received a copy of the employer's attendance policy. The policy informs employees they can be discharged for accumulating 12 attendance points in a rolling calendar year.

On January 11, 2006, the claimant received a written warning for accumulating too many attendance points. Even though, as of January 11, the claimant had 12 points in 12 months, his supervisor considered the claimant to be on a "hold status" instead of discharging him. On January 14, 2006, the claimant had a point come off his record. As of January 14, 2006, the claimant had accumulated 11 attendance points.

The last day the claimant worked was February 2, 2006. The claimant was scheduled to work on February 3. The claimant did not report to work or notify the employer he was unable to work as scheduled. The employer assessed the claimant three attendance points for this occurrence. When the claimant returned to work, the employer discharged the claimant because he received three attendance points for the February 3 incident and had accumulated 14 points in 12 months.

The claimant established a claim for unemployment insurance benefits during the week of February 12, 2006. The claimant filed claims for the weeks ending February 25 through March 25, 2006. He received his maximum weekly benefit amount of \$337.00 for each of these weeks.

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. 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy on January 11, 2006, when his supervisor did not discharge him but allowed him to work until a point rolled off his record on January 14, 2006. Since the claimant did not participate in the hearing, the evidence does not establish why the claimant did not call the employer or report to work on February 3, 2006. As a result, a preponderance of the evidence presented during the hearing indicates the claimant committed work-connected misconduct. As of February 12, 2006, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 25 through March 25, 2006. The claimant has been overpaid a total of \$1,685.00 in benefits he received for these weeks.

DECISION:

The representative's March 1, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 12, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 25 through March 25, 2006. The claimant has been overpaid and must repay a total of \$1,685.00 in benefits he received for these weeks.

dlw/kkf