

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHOUKHONG SOMSANUK
Claimant

APPEAL NO: 14A-UI-10104-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FARMLAND CORP
Employer

OC: 08/31/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 19, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 21, 2014. The claimant did not respond to the hearing notice by providing a phone number where he could be reached at the date and time of the hearing as evidenced by the absence of his name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Becky Jacobsen, Human Resources Manager, 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 Smithfield Farmland Corporation/Farmland Foods from November 3, 2010 to August 13, 2014. He was discharged for excessive absenteeism.

The employer's attendance policy is a no-fault policy. Employees are allowed to accumulate 12 attendance points in a rolling calendar year. Employees are assessed two points for an absence; one-half point for an incident of tardiness of leaving early; three points for a no-call/no-show absence; and one point for consecutive day absences accompanied by a doctor's excuse. Employees receive a verbal warning upon reaching five points; a written warning upon reaching eight points; a final written warning upon reaching 10 points; and are terminated upon reaching 12 points.

The claimant had four attendance points prior to July 15, 2014. On July 15, 2014 the claimant received one-half point because he left early due to illness; he was then absent July 15 through July 19, 2014 and provided a doctor's excuse for his absence which resulted in the accumulation of one attendance point for a total of five and one-half points as of July 20, 2014. The claimant returned to work July 21, 2014 and the employer issued him a verbal warning for having five and one-half points July 24, 2014. On July 28 and July 29, 2014 the claimant was absent due to properly reported illness but did not have a doctor's excuse and consequently received two points for each absence. On July 30, 2014 the claimant was absent due to properly reported illness and provided a doctor's excuse from Crawford County Medical Clinic for that date and received one attendance point. He was then absent August 1 and August 4, 2014 due to properly reported illness but did not have a doctor's note and was assessed two points for each of those dates. The claimant was absent August 5 through August 8, 2014 due to properly reported illness with a doctor's note and received one point.

The claimant returned to work August 11, 2014 and the employer asked him for medical documentation for July 28 through August 8, 2014 because he had accumulated 15 and 1/2 points. The claimant stated he would bring a note the following day. The claimant did bring a note from an N Avenue doctor that was backdated to cover his absences since July 28, 2014. The note stated the claimant was seen in the doctor's office August 7, 2014 and said the claimant was ill since July 28, 2014. That was a different doctor than the one who wrote his first note written August 1, 2014. Because the claimant had so many absences the employer did not have the opportunity to issue the claimant his written and final written warnings.

Given the claimant's previous poor attendance record throughout his employment and his accumulation of 11 and 1/2 attendance points since July 15, 2014, the employer terminated his employment.

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 § 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.

Iowa Admin. Code r. 871-24.32(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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, or absences due to illness that are properly reported but without a doctor's note unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant did violate the employer's attendance policy by exceeding the allowed number of attendance points, but his absences were properly reported and due to illness.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The September 19, 2014, 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

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