

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABDI B FARAH**  
Claimant

**APPEAL NO. 16A-UI-08242-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KEVIN MCCAIN**  
**AGRI STAR MEAT & POULTRY LLC**  
Employer

**OC: 07/03/16**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated July 21, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on July 5, 2016 for excessive absences but finding the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on August 17, 2016. Although duly notified, the claimant did not participate. The employer participated by Ms. Laura Roney, HR Assistant. Employer's Exhibits A through E were admitted into the hearing record.

**ISSUES:**

The issue is whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Abdi Farah was employed by Agri Star Meat & Poultry LLC from October 13, 2014 until July 5, 2016 when he was discharged from employment. Mr. Farah worked as a full-time production worker and was paid by the hour. His immediate supervisor was Jason Manning.

Mr. Farah was discharged when he exceeded the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. Under the terms of the policy, employees are subject to discharge if they accumulate 12 infraction points within a one-year period. Employees are assessed one infraction point for each absence and one-half point for a tardy or leaving early and two points for failure to report or provide notification to the employer. Employees receive warnings when they accumulate three points, six points, and nine points. Company employees are expected to provide notification to the employer of their impending absences at least one hour before the beginning of their production shifts.

Mr. Farah called off work sick on approximately 13 occasions during the most recent year of his employment. On each occasion, however, the claimant failed to properly notify the employer of his impending absence by calling the company one hour before the beginning of his production shift. The final absence that caused the claimant's discharge took place when Mr. Farah called off work on July 5, 2016 stating that he was ill. The claimant's call in, however, was late and took place after the beginning of his work shift in violation of company policy.

**REASONING AND CONCLUSIONS OF LAW:**

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(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

The claimant is not qualified to receive unemployment insurance benefits if the employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code

section 96.5-2. The employer has the burden to prove that a 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).

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 the employee's duties and obligations to the employer.

In order for a claimant's absences that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires the consideration of past acts and warnings. The evidence must first establish, however, that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused, providing the employee has complied with the employer's policy regarding notifying the employer of the absence.

The evidence in the record establishes that Mr. Farah did not follow the employer's attendance policy in connection with the absence on July 5, 2016. The policy required the claimant to personally call in at least one hour before the beginning of the work shift to report his impending absence. The claimant did not do so. The claimant provided notification to the employer only after the beginning of his work shift and not at least one hour before the beginning of the work shift as policy required. The claimant was informed of the employer's call in requirement at the time of orientation.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Mr. Farah was discharged for misconduct. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$2,004.00 since filing a claim with an effective date of July 3, 2016 for the week ending dates of July 9, 2016 through August 13, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's decision dated July 21, 2016, reference 01, is reversed. Claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$2,004.00 and is liable to repay that amount. The employer's account shall not be charged based upon the employer's participation in the fact finding.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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