

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOTSAKAN T MEO
Claimant

APPEAL NO. 11A-UI-11028-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

**OC: 07/24/11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 19, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 14, 2011 and concluded on October 26, 2011 with an interpreter. Claimant participated through interpreter Steve Baccam. Employer participated through human resources assistant manager, Jessica Garcia. Employer's Exhibit 1 (pages 1 – 14) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker and was separated from employment on July 25, 2011. He was tardy by an hour on July 12, 2011 because of a blood work appointment and was discharged. (Employer's Exhibit 1, page 14) He had written warnings about attendance on August 6, 2009, January 19, 2010, May 11, 2011, and July 11, 2011. (Employer's Exhibit 1, pages 6 - 10) He was also tardy on June 22 and 29 when he was over three hours late for work, on May 16 when he was an hour late for work, and on April 12, 2011 when he was 4.23 hours tardy. (Employer's Exhibit 1, pages 11 - 13) His tardiness was primarily related to car problems. He also had some medical appointments that were last minute and some that were made in advance, such as the final incident. His shift started at either 3:00 or 4:00 p.m. He lives in Storm Lake and worked in Denison, about an hour commute.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final incident of tardiness was not of an emergency nature and was unexcused. That, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 19, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css