

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORRIS S AMARA
Claimant

APPEAL NO. 13A-UI-03447-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC
Employer

OC: 02/17/13
Claimant: Appellant (2)

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The claimant, Morris Amara, filed an appeal from a decision dated April 15, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 11, 2013. The claimant participated on his own behalf.

The employer, Pineridge, provided a telephone number to the Appeals Section. That number was dialed at 10:00 a.m. and neither of the listed witnesses were available. A message was left indicating the hearing would proceed without the employer's participation unless a witness contacted the Appeals Section prior to the close of the record. By the time the record was closed at 10:42 a.m. the employer had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Morris Amara was employed by Pineridge from January 11, 2011 until February 20, 2013 as a full-time production worker. Supervisor John Anderson told the claimant on February 12 and 20, 2013, he was going to be transferred to another building because he could not get along with his supervisor. The employer never contacted him to reassign him.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer did not participate to provide any evidence or testimony regarding any misconduct on the part of the claimant. It has failed to substantiate its allegation of misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of April 15, 2013, reference 01, is reversed. Morris Amara is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs