

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL J BOWAH
Claimant

APPEAL NO. 11A-UI-01044-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**"PINERIDGE FARMS LLC
"FORESURE TRANSPORT**
Employer

**OC: 12/12/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Gabriel J. Bowah filed a timely appeal from an unemployment insurance decision dated January 14, 2011, reference 01, that disqualified him for benefits. Due notice was issued for a telephone hearing to be held February 24, 2011. Neither Mr. Bowah nor his former employer, Pineridge Farms, LLC, responded to the hearing notice. Materials from the fact-finding interview were not available to the administrative law judge on the day of the hearing.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: The fact-finding decision in this case states that the claimant was discharged for excessive unexcused absenteeism. There is no evidence in the record of the dates that the claimant was absent, the reasons for any absences or whether the absences were reported to the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct. It does not.

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(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.

The employer has the burden of proof. See Iowa Code § 96.6-2. As noted above, neither party responded to the hearing notice and none of the information submitted for fact finding was available to the administrative law judge. The administrative law judge concludes that there is insufficient evidence to justify disqualification. Benefits are allowed.

DECISION:

The unemployment insurance decision dated January 14, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs