

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IVAN RODRIGUEZ

Claimant

APPEAL NO. 08A-UI-00127-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN OVAL EGGS

Employer

**OC: 12/02/07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ivan Rodriguez filed an appeal from a representative's decision dated December 28, 2007, reference 01, which denied benefits based on his separation from Golden Oval Eggs. After due notice was issued, a hearing was held by telephone on January 22, 2008. Mr. Rodriguez participated personally. The employer participated by Darla Thompson, Human Resources, and Mike Niess, Operations Manager. Exhibits One through Eight were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Rodriguez was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Rodriguez was employed by Golden Oval Eggs from May 23, 2005 until November 1, 2007 as a full-time production worker. He was discharged because of his attendance. The employer only considered those infractions that occurred after May 1, 2007 when the latest attendance policy was implemented.

Mr. Rodriguez was late reporting to work on ten occasions from May 1 through July 21, 2007. He was absent from October 13 through October 15 and provided a doctor's statement verifying the need to be absent. His last day of work was October 17. He called on October 22, 23, and 24 to report that he would be absent because his back was hurting. He did not call on October 27 or October 28. Mr. Rodriguez called on October 29 to report his intended absence but did not call on October 30. He was notified of his discharge in a letter dated November 1, 2007. He received a warning about his attendance on January 22, 2007. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Rodriguez' discharge was prompted by the fact that he was absent two consecutive days without calling in, October 27 and 28. He contended that medications caused him to be drowsy. The administrative law judge is not persuaded that he was prevented from calling due to the effects of medication. He was on medication beginning September 6, 2007 and is still on the same medication. He was able to properly report absences on October 22, 23, and 24 in spite of being on medication. Although Mr. Rodriguez may have had a good reason for being absent on October 27 and 28, the evidence failed to establish any justification for his failure to contact the employer to report the absences. If he was able to call on October 24 and October 29, there should have been no reason he could not call on October 27 and 28. For the above reasons, the absences of October 27 and 28 are unexcused.

Mr. Rodriguez knew he was required to report his absences. He had been warned about his attendance in January of 2007. Although the warning was prior to the new attendance policy, it did serve to put him on notice that unacceptable attendance could lead to his discharge. He accumulated ten occasions of tardiness during a period of approximately three months, May 1 through July 21. The evidence does not establish any reasonable grounds for the repeated tardiness and, therefore, it is unexcused. The administrative law judge concludes that the attendance record identified herein is sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. Accordingly, benefits are denied.

DECISION:

The representative's decision dated December 28, 2007, reference 01, is hereby affirmed. Mr. Rodriguez was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css