

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSA E RODRIGUEZ
Claimant

APPEAL NO. 11A-UI-08721-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC
Employer

**OC: 05/22/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Rosa Rodriguez, filed an appeal from a decision dated June 28, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 25, 2011. The claimant participated on her own behalf and Olga Esparza acted as interpreter. The employer, Pineridge Farms, participated by Human Resources Manager John Anderson and Supervisor Pedro Vazquez.

ISSUE:

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

FINDINGS OF FACT:

Rosa Rodriguez was employed by Pineridge Farms from January 27, 2011 until May 25, 2011 as a full-time meat cutter. She received a final written warning absenteeism on April 25, 2011 from Human Resources Manager John Anderson. An interpreter was present and the contents of the warning were fully explained to her even though she refused to sign it. The employer reminded her of the policy that she would have to bring in a doctor's statement excusing her for any absences due to illness. The "points" would still be on her record but discharge would not occur if she had the medical excuse. She was advised her job was in jeopardy if she missed any more work in the next 90 days.

The claimant called in absent on May 23 and 24, 2011, due to illness. She returned to work on May 25, 2011, but did not have a doctor's excuse. She was then at 12.5 points and was discharged. She stated she did not go to a doctor because she knew why she was sick and did not feel she needed to see the doctor.

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(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 had been advised her job was in jeopardy as a result of her absenteeism. She was also advised to bring in a doctor's excuse in the future for any days she missed due to illness. She may have been ill on May 23 and 24, 2011, but the absence cannot be considered properly reported or excused as she failed to comply with the employer's policy that she provide medical documentation to excuse that absence. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982) and this was not properly excused. In addition to her prior absences and the warning, this is excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of June 28, 2011, reference 01, is affirmed. Rose Rodriguez is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css