**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**GABRIEL J BOWAH**
Claimant

**PINERIDGE FARMS LLC**
Employer

**APPEAL NO: 12A-UI-01117-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 12/25/11**
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Gabriel J. Bowah (claimant) appealed a representative's January 25, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Pineridge Farms, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2012. The claimant participated in the hearing. John Anderson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE**:

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 25, 2011. He worked full-time as a meat cutter on the second shift in the employer's pork processing facility. His last day of work was December 23, 2011. The employer discharged him on December 27, 2011. The reason asserted for the discharge was excessive absenteeism.

Prior to December 8, the claimant had 14 attendance occurrences, including 11 full-day absences and three partial-day absences. Of the 11 days, five were due to claimed illness on the part of the claimant; the remaining six were due to issues such as not having transportation, the claimant's wife being in jail, being out of town, and unspecified personal reasons. Of the three partial days, one was a tardy due to running out of gas, and the other two were leaving early for unspecified reasons. As a result of these prior occurrences, the claimant had been given a final warning for attendance on September 20 with a 90-day probation and a day of suspension, which the claimant served on September 21.

In mid October, the claimant missed a day of work due to claimed illness. The human resources manager, Anderson, then reminded him of the final attendance warning and indicated that the employer would need to have some documentation to cover that absence and any

others during the 90-day probation. The claimant did provide some medical documentation for that absence.

On December 8 the claimant got a call that his wife's father had passed away. He was allowed to leave early that evening. On December 9 the claimant came in and had a discussion with Anderson regarding the fact that the claimant's wife's father had died and that he would need to make a trip to Pennsylvania. Anderson understood that the claimant was seeking time off to attend the funeral. He told the claimant that he could have some approved bereavement leave but that the employer would need to receive some kind of documentation to verify that the claimant had been absent to attend the funeral. The claimant was then absent for his shift on Friday, December 9, which the employer believed was because the claimant was attending to issues related to his father-in-law's death, but was actually because since the claimant's wife had left to attend to her father's funeral arrangements, the claimant had no babysitter for his children.

The claimant called in an absence late (9:12 p.m.) for his 5:00 p.m. shift on Tuesday, December 13; he was to have called in any absence by 4:30 p.m. The reason he gave for his absence that day was having no babysitter. He then did work on December 14, December 15, and December 16; he had arranged to have his cousin watch his children those days. The claimant was then absent on Monday, December 19, and Tuesday, December 20. He called in late both days, indicating that he was not in town. The employer assumed that these were the days the claimant was in Pennsylvania attending his father-in-law's funeral. On December 23 the employer reminded the claimant that he was supposed to bring in documentation of the funeral so that the absences could be excused, and told him he had until December 27 to provide that documentation. The claimant indicated that he could not produce such documentation and, as a result, on December 27 the employer discharged the claimant.

The reason that the claimant could not produce the documentation was that he had not gone to Pennsylvania for the reason of attending the funeral. The claimant's wife had left Iowa after the evening of December 8 to travel to Africa, where her father had been living and where he had died. The claimant traveled to Pennsylvania to take his children to be with the claimant's mother-in-law, who was divorced from the claimant's father-in-law, so that the mother-in-law could care for the children while the claimant's wife was in Africa, which was anticipated to be an extended time of up to two months. The claimant indicated he needed his mother-in-law to care for his children, as he could not afford to continue to pay his cousin for childcare.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). The claimant did have prior excessive and unexcused absences. Absences due to issues that are of purely personal responsibility, specifically including issues such as childcare and transportation, are not excusable. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984); *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's January 25, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 27, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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