

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAROBY GONZALEZ**  
Claimant

**APPEAL NO. 12A-UI-01916-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINERIDGE FARMS LLC**  
Employer

**OC: 01/15/12  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 20, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 13, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. John Anderson participated in the hearing on behalf of the employer with a witness, Wade Brueggeman. Exhibits One through Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a blender operator from December 30, 2010, to December 19, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant had a history of excessive tardiness that included 10 incidents of tardiness from January 21, 2011, through December 16, 2011. He was warned about his excessive absenteeism and tardiness on May 19, June 15, and October 11, 2011, and knew his job was in jeopardy due to his attendance problems.

On December 19, the claimant was scheduled to work from 7 a.m. until work was finished, which usually was from 4 to 5 p.m. He left work at 8:45 a.m. for an approved appointment with his probation officer scheduled for 9:00 a.m. He was expected to return to work in about an hour. At every probation appointment, he was required to submit to a drug test. On December 19, his urine sample was rejected as diluted. He was instructed to come back later in the day to be retested. The claimant did not return to work or notify the employer about the delay in returning to work. He went home to eat something and ended up falling asleep until the afternoon. The claimant does take some medication with drowsiness as a side effect. No

attempt was made to contact the employer about what was going on. He returned to the probation office at about 3 p.m. to provide another sample for testing.

The claimant reported to work at 4 p.m. with a letter from his probation officer explaining about the appointment at 9 a.m., the rejected drug test, and the return to the probation office at 3 p.m. for retesting. The claimant had no explanation his whereabouts during the time between appointments. He was asked to return to the human resources office the next morning. The human resources manager discovered from the probation officer the fact that the claimant's delay in returning to the probation office was due to him falling asleep at home.

On December 20, 2011, the employer discharged the claimant for excessive unexcused absenteeism.

The claimant filed for and received a total of \$4,257.00 in unemployment insurance benefits for the weeks between January 15 and March 17, 2012.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides that 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 a record of excessive unexcused tardiness for which he was warned. His reason for not returning to work as scheduled on December 19 was without any reasonable excuse. He mentioned taking medication that causes drowsiness, but he never should have been in a position where he could potentially fall asleep considering everything he had a stake at his job and probation office. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated February 20, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw