

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REGGIE J REMA
Claimant

DEREK BENTEN
Employer

APPEAL NO. 11A-UI-00947-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/05/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated January 13, 2011, reference 02, that held the claimant was not discharged for misconduct on December 8, 2010 and benefits are allowed. A hearing was held on February 23, 2011. The claimant participated. Derek Bentien, Owner, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant was hired as a full-time laborer on October 28, 2010 to work construction and on the farm. The employer counseled claimant about being late to work in early November.

Claimant requested to be off work two days during the first shotgun deer season that began on Saturday, December 4 and ends on Wednesday, December 8. Claimant understood he could miss work on Monday, December 6, and Tuesday, December 7. Claimant reported to work on December 8, and after working about an hour and one-half, he was sent home with the instruction he would be called when needed. When claimant was not called back, he filed for unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

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(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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on December 8, 2010, for excessive "unexcused" absenteeism.

The employer admitted he granted claimant time-off for the first season deer hunt, and claimant reported for work and did work on his last day. Absent any prior written warning and/or written permission as to the period claimant was excused from work, job disqualifying misconduct for unexcused absences is not established.

DECISION:

The decision of the representative dated January 13, 2011, reference 02, is affirmed. The claimant was not discharged for misconduct in connection with employment on December 8, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs