

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOE PINEDA
Claimant

APPEAL NO. 12A-UI-02145-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERTS & DYBDAHL INC
Employer

**OC: 04/24/11
Claimant: Appellant (5)**

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The claimant, Noe Pineda, filed an appeal from a decision dated February 29, 2012, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 20, 2012. The claimant participated on his own behalf and Ike Rocha acted as interpreter. The employer, Roberts & Dybdahl, participated by Operations Manager Scott Messamaker.

ISSUE:

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

FINDINGS OF FACT:

Noe Pineda was employed by Roberts & Dybdahl from August 15 until December 28, 2011 as a full-time production worker. On November 27, 2011, he asked his supervisor for 18 days off to return to El Salvador to deal with the death of his son. That time was approved. He should have returned to work on December 16 or 17, 2011.

The claimant did not return to work in 18 days and at the end of December 2011, the employer discharged him for failing to return to work. Mr. Pineda did return on January 18, 2012, but was told by Operations Manager Scott Messamaker he had been discharged because he had not returned to work after 18 days.

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.

Iowa Code section 96.5-2-b-c 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:

b. Provided further, If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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 was approved for time off for 18 days. He extended that leave without approval from, or even notice to, the employer. He did not return to work for an additional 30 days after the approved leave had ended. These were unreported and unapproved, and therefore unexcused. He was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of February 29, 2012, reference 03, is modified without effect. Noe Pineda was discharged for misconduct. He is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw