

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTONIO ROMERO
Claimant

APPEAL NO. 06A-UI-08594-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA AG LLC
Employer

**OC: 07-03-06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Iowa Ag, L.L.C. filed a timely appeal from an unemployment insurance decision dated August 23, 2006, reference 01, which allowed benefits to Antonio Romero. After due notice was issued, a hearing was held in Mason City, Iowa on October 23, 2006 with Mr. Romero participating on his own behalf and being represented by Evelyn Ocheltree, Attorney at Law. Supervisors Pablo Durán and Francisco Mendez and Supervisor Assistant Martín Salinas participated for the employer. Exhibits One and Two were admitted into evidence. This matter is considered on a consolidated record with 06A-UI-08595-A. Rita Miller served as the interpreter.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Antonio Romero was employed by Iowa Ag L.L.C. from June 12, 2004 until he was discharged on or about July 31, 2006. He last worked on July 7, 2006.

The employer's procedure is for employees to make an oral vacation request to their supervisor. The supervisor puts the request in writing and submits it to company management. Mr. Romero requested three weeks' vacation for both himself and his wife, Clementina Romero, in May or June 2006. The request was approved, but only for two weeks. This fact was not passed along to the Romeros before they left for their vacation. They were discharged upon their return.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct. For the reasons which follow, the administrative law judge concludes that it does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Excessive unexcused absenteeism is one form of misconduct. See 871 IAC 24.32(7). The facts we'll dispute in this case is whether Mr. Romero requested two or three weeks' vacation. Mr. Durán testified that Mr. Romero had requested only two weeks of vacation and that he had made the request only for himself. This testimony was contradicted in part by the employer's witness, Francisco Mendez. Mr. Mendez stated that Mr. Durán had said that the request had been made for both Mr. and Mrs. Romero. He was unaware as to whether the request had been for two or for three weeks. This discrepancy in testimony calls into question the accuracy of Mr. Durán's memory.

Mr. Romero testified credibly under oath and subject to cross-examination that he would not have been gone for three weeks if he had known that the employer had approved only two weeks of vacation. The administrative law judge also finds credible Mr. Romero's testimony that he had requested three, not two, weeks of vacation. Finding Mr. Romero's testimony the more credible, the administrative law judge concludes that the employer has not established by a preponderance of the evidence that the claimant deliberately overstayed his vacation. Thus, the absences cannot be considered unexcused for unemployment insurance purposes. Benefits are withheld.

DECISION:

The unemployment insurance decision dated August 23, 2006, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs