

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERON L FERRONI
Claimant

APPEAL NO. 07A-UI-02981-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAGEN CONSTRUCTION OF MINNESOTA
Employer

**OC: 10/29/06 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Eron Ferroni filed an appeal from a representative's decision dated March 12, 2007, reference 05, which denied benefits based on his separation from Fagen Construction of Minnesota (Fagen). After due notice was issued, a hearing was held by telephone on April 10, 2007. Mr. Ferroni participated personally. The employer participated by Tabby Niemeyer, Personnel Assistant. The hearing was recessed to allow for the submission of documents requested by the administrative law judge. The hearing reconvened on April 20, 2007 with the same parties participating. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Ferroni was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ferroni began working for Fagen on December 4, 2006 as a full-time rod buster. On December 27, he was to be at work at 6:45 a.m. but did not report until 8:00 a.m. because of a flat tire. He did not report for work or contact the employer on December 30, which was a make-up day. He signed a written warning which indicated he had been a "no call/no show" on December 30. He did not dispute the warning.

Mr. Ferroni's last day of work was January 26 and he was scheduled to return to work on January 29. He was arrested on January 28 for non-payment of fines. He was released from jail at 11:00 a.m. on January 29. He had not called the employer to advise that he would be absent. When he contacted the employer, he was notified that he no longer had a job with Fagen. Attendance was the sole reason for his separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Ferroni only worked for the company approximately two months. During that time, he was absent on two separate dates without calling in. He was warned about not calling in on December 30. In spite of the warning, he failed to call to report his absence of January 29. Because they were not properly reported, both the absence of December 30 and that of January 29 are unexcused. Given the short period of employment and given that he had been warned about not calling in, the administrative law judge concludes that his two unexcused absences were excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect.

For the reasons cited herein, the administrative law judge concludes that the employer has satisfied its burden of proving that Mr. Ferroni should be disqualified from receiving benefits.

DECISION:

The representative's decision dated March 12, 2007, reference 05, is hereby affirmed as to result. Mr. Ferroni was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs