

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HANSON KAHN
Claimant

APPEAL NO. 11A-UI-13066-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS
Employer

**OC: 09/11/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Hanson Kahn filed a timely appeal from an unemployment insurance decision dated September 28, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on November 2, 2011, with Mr. Kahn participating. Human Resources Manager John Anderson testified for the employer, Pineridge Farms. Employer Exhibit 1 was admitted into evidence. Chris Hodges was present but was not called to testify.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Hanson Kahn was employed by Pineridge Farms from August 31, 2010, until he was discharged for poor attendance on September 7, 2011. The final absence occurred on September 6, 2011. Mr. Kahn's vehicle was not working. He called the company to ask that it call a cab for him. The company does not provide transportation for employees, but it assists employees in such situations by calling the cab company and providing the employee with a voucher so that the cab fare is deducted from the employee's next paycheck. The cab company reported to the employer that it responded but that no one was at Mr. Kahn's location. Mr. Kahn was absent on September 1, 2011, because he was ill. Company policy requires that an employee call at least 30 minutes before the beginning of his shift. Mr. Kahn called 17 minutes after the beginning of the shift. Mr. Kahn was tardy on August 25, and July 22, 2011. He was absent on June 2, 2011, telling the employer that he had a "big problem." He had also been absent and tardy on other occasions during his employment. Mr. Kahn received warnings on January 15, and July 21, 2011. He refused to sign them. He also refused to sign the discharge documents.

The employer did not consider Mr. Kahn's absences in April, which were due to a family funeral, and his absence for a work-related medical matter in January.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer provided testimony and documentary evidence of attendance violations throughout Mr. Kahn's employment. Mr. Kahn's response was that most of the incidents did not occur. The administrative law judge finds it unlikely that the employer would have deliberately falsified Mr. Kahn's attendance records over the course of a year before discharging him or that it would have made repeated errors in the attendance record. The administrative law judge concludes that the employer's evidence is the more credible. The evidence establishes a pattern of tardiness and absence for reasons other than personal or family illness. Benefits are withheld.

DECISION:

The unemployment insurance decision dated September 28, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw