

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEX V GLAY
Claimant

APPEAL NO. 11A-UI-05165-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS
Employer

**OC: 03/06/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alex Glay filed an appeal from a representative's decision dated April 6, 2011, reference 01, which denied benefits based on his separation from Pineridge Farms. After due notice was issued, a hearing was held by telephone on May 12, 2011. The employer participated by John Anderson, Human Resources Manager. Mr. Glay did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Glay was employed by Pineridge Farms from February 18, 2010 until March 11, 2011. He worked full time in production. He was discharged because of his attendance.

Mr. Glay was verbally warned about his attendance on September 14, 2010. His last day of work was March 4, 2011. He called on March 7 to report that he would be absent due to a family emergency. He called on March 8 and indicated he would be absent because his wife was in the hospital. He did not call or contact the employer on March 9 or March 10. He did not report to work or contact the employer before the start of his shift on March 11. The employer learned that he had been in jail since March 6. Mr. Glay came to the workplace the afternoon of March 11 to get his paycheck. His job was no longer available to him at that time. Attendance was the sole reason for the 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 § 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 benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Glay missed five consecutive days of work due to his incarceration on March 6. He gave false reasons for being absent March 7 and 8 and gave no notice of the absences of March 9, 10, and 11. The absences of March 7 and 8 are unexcused as being in jail is not reasonable grounds for missing time from work. Absences caused by matters of personal responsibility, such as incarceration, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Moreover, Mr. Glay gave false information as to the reason for the two absences. The absences of March 9, 10, and 11 are unexcused as they were not properly reported.

Mr. Glay had been verbally warned about his attendance. Five consecutive unexcused absences is sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards the employer had the right to expect. It is concluded, therefore, that disqualifying misconduct has been established. As such, benefits are denied.

DECISION:

The representative's decision dated April 6, 2011, reference 01, is hereby affirmed. Mr. Glay was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs