

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON L STEEL**

Claimant

**APPEAL NO. 09A-UI-07990-C**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROSENMAN'S INC**

Employer

**OC: 04/12/09**

**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Rosenman's, Inc. filed an appeal from a representative's decision dated May 27, 2009, reference 01, which held that no disqualification would be imposed regarding Jason Steel's separation from employment. After due notice was issued, a hearing was held August 4, 2009 in Ottumwa, Iowa. The employer participated by Tom Hull, President. Mail directed to Mr. Steel at his last-known address of record was returned by the postal service with a notation that he had moved and left no forwarding address.

**ISSUE:**

At issue in this matter is whether Mr. Steel 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. Steel began working for Rosenman's, Inc. on April 5, 2006 as a full-time laborer. He was discharged because of his attendance. He received verbal warnings about his attendance on June 9 and August 18, 2008. He received a written warning about attendance on January 19, 2009.

Mr. Steel was absent one-half day on March 2, 2009 because he had things he needed to get done. He notified the employer on April 7 that he was checking himself in for treatment and would be gone 21 days. He was told to keep the employer informed about his planned treatment. Mr. Steel did not call or report for work on April 8. He came to the workplace on April 9 with paperwork showing he was going to have inpatient treatment. He returned to the workplace on April 10 to get his paycheck and advised the employer he would be checking in for treatment that day.

On April 13, Mr. Steel called the employer at 7:30 a.m. to report that he had checked himself out of treatment. He also indicated he would be getting a blood test that day. He was told to report to work after the blood test or notify the employer of his intentions. The employer did not hear

further from him until he reported for work the following day, at which time he was discharged. Attendance was the sole reason for the separation.

Mr. Steel filed a claim for job insurance benefits effective April 12, 2009. He has received a total of \$1,990.00 in benefits since filing the claim.

#### **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 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. Steel was on notice from his verbal and written warnings that his attendance was unsatisfactory and could lead to his discharge. In spite of the written warning on January 19, 2009, he continued to miss work without reasonable cause or without notice to the employer. His partial absence on March 2 is unexcused because it was for personal reasons as he had things to get done. He did not call or come to work on April 8. The employer had asked him to keep him advised of his plans for treatment. The evidence failed to establish any good reason for Mr. Steel's failure to work on April 8 or 9 as he was not scheduled to enter treatment until April 10. He did not participate in the hearing to explain why he was unable to work the two days before his admission for treatment. As such, both absences are unexcused.

Mr. Steel knew on the morning of April 13 that he was expected to report for work or contact the employer after the blood testing that day. He did neither. Therefore, the absence of April 13 is also unexcused. He had at least four periods of unexcused absenteeism during the three months following his final warning. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. As such, Mr. Steel is not eligible to receive job insurance benefits.

Benefits have been received since Mr. Steel filed his claim effective April 12, 2009. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

**DECISION:**

The representative's decision dated May 27, 2009, reference 01, is hereby reversed. Mr. Steel was discharged for misconduct in connection with his employment. Benefits are withheld 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. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Steel will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs