

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**REJINA M MCCULLEY
1610 WISCONSIN
MUSCATINE IA 52761**

**ALLSTEEL INC
200 OAK ST
PO BOX 1109
MUSCATINE IA 52761**

**Appeal Number: 05A-UI-01401-CT
OC: 01/09/05 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rejina McCulley filed an appeal from a representative's decision dated February 3, 2005, reference 01, which denied benefits based on her separation from Allsteel, Inc. After due notice was issued, a hearing was held by telephone on February 24, 2005. Ms. McCulley participated personally and Exhibit A was admitted on her behalf. The employer participated by Sue McDonald, Human Resources Generalist. Exhibit One was admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. McCulley was employed by Allsteel, Inc. from August 25, 1997 until January 13, 2005 as a full-time machine operator. She was discharged because of her attendance.

Ms. McCulley was late reporting to work on December 16, 2003. She went home early on May 18 and July 12, 2004. She never left work early without permission. Thereafter, she was absent on 11 occasions due to illness, all of which were properly reported. Ms. McCulley received a verbal warning about her attendance on September 2 and a written warning on October 4, 2004. The final event, which triggered the discharge, was the fact that Ms. McCulley was approximately one hour late on January 12, 2005 because her car would not start. She was notified of her discharge on January 13, 2005. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McCulley was separated from employment for any disqualifying reason. 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 job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

The occasions on which Ms. McCulley left work early are considered excused absences as she never left without the permission of a supervisor. Her remaining absences of a full day are excused as they were for reasonable cause, illness, and were properly reported. The tardiness of January 12, 2005 is unexcused as it was due to personal matter, the fact that her car would not start. The tardiness of December 16, 2003 is likewise unexcused as it was not for reasonable cause. However, the administrative law judge does not consider the two incidents of tardiness to be sufficient to establish disqualifying misconduct. The two occasions of tardiness were over one year apart. The final incident was due to an unexpected event over which Ms. McCulley had no control. She could not have predicted or anticipated that her car would not start on January 12.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 3, 2005, reference 01, is hereby reversed. Ms. McCulley was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc