

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES B DOHRMANN**  
Claimant

**APPEAL NO. 12A-UI-15243-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 11/25/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Allsteel Inc. filed a timely appeal from a representative's decision dated December 18, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits . After due notice was provided, a telephone hearing was held on January 31, 2013. Although Mr. Dohrmann was duly notified, he did not participate. The employer participated by Ms. Denice Norman, Hearing Representative and witness, Emily Bennett, Human Resource Generalist.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: James Dohrmann was employed by Allsteel Inc. from September 4, 2012 until November 27, 2012 when he was discharged from employment. Mr. Dohrmann was hired to work as a full-time production worker and was scheduled to work set working hours on the company's second shift. Mr. Dohrmann was paid by the hour. His immediate supervisor was Mr. Ben Frer.

Mr. Dohrmann was discharged from his employment with Allsteel Inc. because he had exceeded the permissible number of attendance infractions allowed to a probationary employee during the first 90 days of their employment with the company.

Mr. Dohrmann had called in sick on September 25, 2012, properly reporting that he could not report to work due to illness that workday. On October 11, 2012 Mr. Dohrmann left work early due to "side pain" after obtaining approval from the company to leave. On November 26, 2012, the claimant's last day of employment, Mr. Dohrmann "walked off the job" without getting permission of his supervisor or explaining why he was leaving. Because company policy provided that three instances of tardiness and or absenteeism can result in termination during the first 90 days of employment, a decision was made to terminate Mr. Dohrmann from his employment at that time.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

In this matter Mr. Dohrmann was discharged when he did not meet the employer's standards during his first 90-day probationary period of employment by being absent one day due to illness that was properly reported and by leaving work early on two other occasions. Mr. Dohrmann left work early on October 11, 2012 due to "side pain" having apparently informed the employer the reason and securing permission to leave prior to the end of the work shift. The final incident that caused the claimant's discharge took place on November 26, 2012 when the claimant left work during the work shift without completing it and without first securing permission to do so. Because that was the claimant's third attendance infraction during the trial period of employment, he was discharged from employment at that time.

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The court further held that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer. The claimant's two previous absences with Allsteel were thus excused as they were due to illness and were properly reported.

The Iowa Supreme Court in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence does not constitute misconduct even in a case in which the worker disregarded specific instructions to call the employer that day.

Because the evidence in the record clearly establishes that the claimant was not discharged for the act of walking off the job itself but because his discharge was related to attendance violation, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying conduct sufficient to warrant the denial of unemployment insurance benefits. The claimant's two previous absences were excused and therefore his absences were not excessive and under the rule announced in Sallis the claimant's single unexcused absence on November 26, 2012 did not constitute misconduct. The administrative law judge therefore concludes that the claimant's discharge took place under nondisqualifying conditions.

**DECISION:**

The representative's decision dated December 18, 2012, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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