

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RICKY B SISK**  
Claimant

**ALLSTEEL INC**  
Employer

**APPEAL 15A-UI-13314-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/18/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Ricky Sisk (claimant) filed an appeal from the November 23, 2015, (reference 02) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment when he failed to report to work or notify Allsteel, Inc. (employer) that he would not be at work. The parties were properly notified about the hearing. A telephone hearing was held on December 23, 2015. The claimant participated on his own behalf. The employer participated through Member and Community Relations Representative Brooke Sweeney and was represented by Pamela Drake of Employer's Edge, LLC. Claimant's Exhibit A was received. Employer's Exhibits 1 through 3 were received.

**ISSUES:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a machine operator beginning on September 20, 2014, and his last day worked was October 23, 2014 when he went on a leave of absence for a non-work-related illness. On February 26, 2015, the claimant's doctor supplied documentation to the employer stating the claimant needed to be off work for "months." (Claimant's Exhibit A.)

On June 9, 2015, the employer sent a certified letter to the claimant stating his leave was about to expire and asked for additional medical documentation to extend his leave. The employer also explained that if he failed to supply it by July 1, 2015, he would have been considered to have voluntarily ended his employment. (Employer's Exhibit 1.) The claimant signed for the certified letter. (Employer's Exhibit 2.) However, he did not supply any further medical documentation or contact the employer because he did not feel capable of doing so based on his medical condition. On July 7, 2015, the employer sent the claimant a letter notifying him that

his employment had ended. As of the date of the hearing, the claimant still has not been released back to work by his physician.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit his employment but was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, the claimant contends he did not feel capable of complying with the employer's request for updated medical documentation. Accepting the claimant's claim as true, he could not form the necessary intent to quit his employment. The employer was also the one who ended the claimant's employment on July 7, 2015 as the claimant did not have the option of remaining employed. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or

injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. FMLA provisions were enacted to protect an individual's employment, not to be used as a weapon by an employer against its employee. Likewise, an employee bears responsibility for compliance with FMLA terms and cooperative communication with the employer.

The employer warned the claimant on June 9, 2015 that his leave was approved through July 1, 2015 and he needed to supply additional information to remain on leave. It also warned him that unexcused absences would result in the end of his employment. The employer discharged the claimant on July 7, 2015; seven days after his excused leave expired and without any communication from the claimant about his absence. The claimant's absence was unexcused as he failed to properly report it and excessive. Benefits are denied.

**DECISION:**

The November 23, 2015, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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