

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC RUIZ
Claimant

APPEAL NO. 08A-UI-11496-S2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

ALLSTEEL INC
Employer

**OC: 11/09/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Eric Ruiz (claimant) appealed a representative's December 8, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Allsteel (employer) for excessive unexcused absenteeism and tardiness after being warned. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in November 2005, as a full-time assembly line worker. The claimant received the employer's handbook, which contained the attendance policy. The claimant received warnings for attendance and knew that further infractions could result in his termination. Most of his absences were due to transportation issues.

On November 7, 2008, the claimant reported to the employer that he could not work due to vehicle problems. The claimant did not ask about working on November 8, 2008, and did not appear for work. On November 10, 2008, he knew his job was in jeopardy. He telephoned the employer to see if he still had a job. The employer told him he was terminated for attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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(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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's December 8, 2008 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw