

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD T WILSON
Claimant

ALLSTEEL INC
Employer

APPEAL 20A-UI-02441-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

AllSteel (employer) appealed a representative's March 11, 2020, decision (reference 01) that concluded Brad Wilson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Rachel Cox, Member Community Relations Representative, and Brittany Dirks, Member and Community Relations Business Partner.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid unemployment insurance benefits, and which party should be held responsible for the overpayment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 18, 2013, as a full-time advance maintenance technician. He worked Monday through Friday, 2:00 p.m. to 10:00 p.m. The employer gave him ten-minute breaks at 4:30 p.m. and 8:30 p.m. He took a twenty-minute break at 6:30 p.m.

He signed for receipt of the employer's handbook on June 25, 2015. The policy allows employees to use some company electronic communication if it does not interfere with productivity. The policy stated that dishonesty was grounds for immediate termination. The claimant was issued warnings for taking an extra smoke break and not following instructions.

On or about January 28, 2020, the employer discovered that the claimant took more than two hours extra break time in the maintenance shop talking to co-workers, using his cellphone and using the company computers on January 20, 25, 27, and 28, 2020. The employer suspended the claimant on February 3, 2020, and investigated the matter. On February 10, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of February 16, 2020, and received no benefits after the separation from employment. The employer participated personally at the fact finding interview on March 10, 2020, by Rachel Cox.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

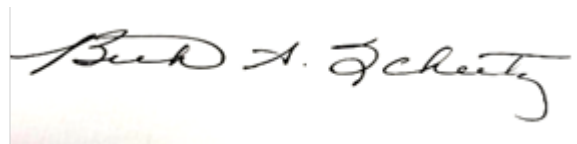
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded

the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally took more than two hours a day for at least four days in personal break time. While the claimant took additional breaks, he used the employer's computer. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The representative's March 11, 2020, decision (reference 01) is reversed. 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

May 4, 2020
Decision Dated and Mailed

bas/scn