

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER D STANBRO**  
Claimant

**APPEAL NO. 16A-UI-06656-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 05/22/16**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Allsteel, Inc., the employer, filed a timely appeal from a representative's decision dated June 8, 2016 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 1, 2016. The claimant participated. The employer participated by Ms. Pamila Drake, Hearing Representative, and witnesses Ms. Dara Hallman, Claims Specialist, and Ms. Ashley Steffens, Human Resource Generalist. Employer's Exhibits One, Two, Three, Four, and Six were admitted into the hearing record.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Heather Stanbro was employed by Allsteel, Inc. from April 21, 2014 until May 25, 2016, when she was discharged from employment. Ms. Stanbro was employed as a full-time production employee and was paid by the hour. Her most recent, immediate supervisor was Mr. Robert Bledsoe.

Ms. Stanbro was discharged on May 25, 2016, after the employer recalculated the claimant's attendance infractions and concluded that she had exceeded the nine points of attendance infractions that are allowed in a one-year rolling period. The claimant's final attendance infraction had taken place approximately two weeks previously on May 13, 2016, when the claimant had called off work to accompany her grandmother, who resides with her, to a heart procedure. At the time of the final incident, the claimant was not aware that her job was in jeopardy. Although the claimant had been given an attendance corrective action notice on February 12, 2016, the claimant had received conflicting information from her new supervisor; who had stated that the claimant still had six and one-half points remaining.

The company uses a “no-fault” attendance policy that allows only a specified number of attendance infractions in a 12-month rolling period. Employees are subject to discharge if they accumulate nine infraction points within a 12-month rolling period. Infraction points roll off after a 12-month period. The reason for the absence is not considered by the employer, unless an employee has applied for and been authorized to use Family Medical Leave.

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

For the reasons that follow, the administrative law judge concludes that the claimant was discharged from employment under non-disqualifying conditions.

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(1)a, (7), and (8) 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).

(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.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing job disqualifying 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 the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. In order for a claimant's absences to constitute as misconduct that would disqualify the claimant for receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent attendance infraction that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absence related to issues of personal responsibilities such as transportation or oversleeping are considered unexcused. Absence related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the claimant's last absence was due to the illness of a close family member that resided with the claimant and was properly reported to the employer by Ms. Stanbro. The evidence in the record also establishes that the claimant had been given misinformation about the number of attendance infraction points that remained available to her. The employer in this case also allowed the claimant to remain employed for almost two weeks after the final incident before discharging her from the employment. While the employer may have had justifiable business reasons for discharging the claimant, the evidence produced during the hearing does not establish intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated June 8, 2016 (reference 01) is affirmed. The claimant was discharged under non-disqualifying 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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