

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RYAN L HAGERSTROM
1306 BYRON AVE
WATERLOO IA 50702**

**INTERSTATE BRANDS CORP
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03164-AT
OC: 02-15-04 R: 03
Claimant: Respondent (5R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2a - Discharge

STATEMENT OF THE CASE:

Interstate Brands Corporation filed a timely appeal from an unemployment insurance decision dated March 15, 2004, reference 02, which allowed benefits to Ryan L. Hagerstrom upon a finding that he was on temporary layoff. After due notice was issued, a telephone hearing was held April 5, 2004 with Mr. Hagerstrom participating. Human Resources Manager Robert Feagan and Human Resources Assistant Kelly Green participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ryan L. Hagerstrom was employed on call as a

part-time helper by Interstate Brands Corporation from September 30, 2000 until he was suspended February 14, 2004 and discharged on March 4, 2004.

When Mr. Hagerstrom reported to work on February 14, he asked permission of Foreman Kent Zing to leave early. Mr. Zing told Mr. Hagerstrom to speak with him before he left that day. Mr. Zing then asked Union Steward Troy Lindholm to reinforce that message. Mr. Lindholm did so. At approximately 2:30 p.m., Mr. Hagerstrom spoke with Mr. Zing. Mr. Zing said he needed someone to stay for another three hours to load cake wire. Mr. Hagerstrom pointed out that a part-time worker could be called in for those three hours and would earn several dollars less per hour than Mr. Hagerstrom would. There was a dispute between Mr. Hagerstrom and Mr. Zing. Mr. Zing left the meeting without telling Mr. Hagerstrom he could or could not leave. Mr. Hagerstrom left because he needed to return his fiancé's vehicle to her.

Mr. Hagerstrom was discharged based solely on the events of February 14, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Hagerstrom was discharged for misconduct in connection with his employment. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. See Iowa Code Section 96.6-2. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). A single incident of unexcused absence, even one in which an individual misses work after being told specifically that he could not have a day off, is not sufficient to establish excessive unexcused absenteeism. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

This case resembles Sallis in many respects. Mr. Sallis had asked his employer for permission to be absent on a certain day. Permission was denied but Mr. Sallis was absent anyway. He was discharged for that absence. Here, Mr. Hagerstrom requested permission to leave work early on February 14, 2004. It does not appear that permission was granted. He left in any event and lost his job as a result. Since the facts in the case follow so closely those in Sallis, the administrative law judge concludes that the Sallis analysis is binding. No disqualification may be imposed.

Testimony in the record indicates that Mr. Hagerstrom was an on-call employee for Interstate Brands Corporation. A review of Agency records indicates that Interstate Brands Corporation is the sole base period employer. This matter is remanded to the Unemployment Insurance Services Division for a determination as to Mr. Hagerstrom's eligibility for unemployment insurance benefits since all of his base period wage credits are for on-call employment.

DECISION:

The unemployment insurance decision dated March 15, 2004, reference 02, is modified. The claimant was discharged under circumstances not constituting job related misconduct. Benefits are allowed, provided he is otherwise eligible. The issue of the claimant's eligibility for benefits since all wage credits are for on-call employment is remanded to the Unemployment Insurance Services Division.

tjc/b