

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIRANDA K MORENO**  
Claimant

**APPEAL NO. 10A-UI-07404-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**Original Claim: 01/24/10  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Allsteel, Inc. filed a timely appeal from an unemployment insurance decision dated May 10, 2010, reference 01, that allowed benefits to Miranda K. Moreno. After due notice was issued, a telephone hearing was held July 20, 2010. Ms. Moreno did not provide a telephone number at which she could be contacted. Production Supervisor Dennis Thuman participated for the employer. The administrative law judge takes official notice of agency benefit payment records.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Miranda K. Moreno was employed by Allsteel, Inc. from June 19, 2006, until she was discharged April 17, 2010. She last worked as a Grade 3 Utility Worker. Ms. Moreno called the employer on April 17, 2010, to say that she would be running late and that she would not report to work because she feared she faced discharge. She had also been tardy on December 10, 2009; November 23, 2009; October 14, 2009; and August 4, 2009. She had received a verbal warning about attendance on October 19, 2009, and a written warning on December 7, 2009.

Ms. Moreno has received unemployment insurance benefits since her discharge.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See 871 IAC 24.32(7). The evidence in this record establishes five instances of tardiness between August 4, 2009, and the date of separation. This is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay benefits that she has received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated May 10, 2010, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of recovery of overpayments is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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