

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAKE L SULZBERGER
Claimant

APPEAL NO. 10A-UI-15280-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

**Original Claim: 01/24/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 25, 2010, reference 01, which denied benefits. After due notice was issued, a telephone hearing was held on December 13, 2010. The claimant participated personally. The employer participated by Deniece Norman, hearing representative, and witnesses Brent Nemitz, Todd Robinson, and Scott Richmond. Employer's Exhibits One through Six were received into evidence.

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 the evidence in the record, the administrative law judge finds: The claimant was employed by Allsteel, Inc. from January 28, 2008, until September 20, 2010, when he was discharged for excessive absenteeism. Mr. Sulzberger worked as a full-time assembler and was paid by the hour. His immediate supervisor was Scott Richmond.

Mr. Sulzberger was discharged after he exceeded the permissible number of attendance infractions allowed under company policy. Mr. Sulzberger was aware of the policy and had received warnings prior to being discharged. The claimant received a final warning on August 28, 2010, and was aware that additional attendance infractions could result in his termination from employment. The claimant was discharged when he failed to report for scheduled work on time on September 20, 2010. On that date, the claimant had car trouble and reported to work late. Mr. Sulzberger attempted to provide notification to the employer that he would be late that day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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(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.

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. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of child care, and oversleeping are not considered excused. See 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 for work. The employer has established that the claimant was warned that future unexcused absenteeism would result in termination of employment and that 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 decision dated October 25, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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