

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL L WINGERTER**  
Claimant

**APPEAL NO. 13A-UI-09575-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 07/21/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated August 9, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on October 14, 2013, in Davenport, Iowa. The claimant participated personally. The employer did not show up for the hearing. The record consists of the testimony of Daniel Wingerter. Also present was Daniel Wingerter, SR.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures office furniture at its plant located in Muscatine, Iowa. The claimant was hired as a full time painter in December 2004. His last day of work was July 23, 2013. He was terminated because he was a no-call/no-show on July 20, 2013. The claimant had reached the number of points under the employer's attendance policy for termination. The claimant's previous absences were all due to personal illness properly reported.

**REASONING AND CONCLUSIONS OF LAW:**

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). A single unexcused absence did not constitute misconduct even in a case in which the

worker disregarded the employer's instruction to call back with a status report after the worker saw the doctor. See Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. One instance of no-call/no-show is not misconduct. Although the claimant had other absences, these absences were due to personal illness and properly reported. Under Iowa law, these absences for personal illness are considered excused absences. Since there is no evidence of excessive unexcused absenteeism, benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated August 9, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs