

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRK R EDWARDS
Claimant

APPEAL NO. 08A-UI-03241-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

**OC: 02/17/08 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Allsteel, Inc., filed an appeal from a decision dated March 25, 2008, reference 01. The decision allowed benefits to the claimant, Kirk Edwards. After due notice was issued a hearing was held by telephone conference call on April 16, 2008. The claimant participated on his own behalf and with a witness Angel West. The employer participated by Group Leader Steve Graham and Human Resources Manager Taryn Keppy. Exhibit A was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Kirk Edwards was employed by Allsteel from March 13, 2006 until January 24, 2008, as a full-time utility person in distribution support. He had received a warning in December 2007, regarding his attendance because he had reached a certain number of attendance points. Some were due to illness and some to being unable to get to work because of bad weather.

The claimant's last day of work was January 18, 2008, and he did not work after that because he had injured his neck. It was not a work-related injury. He called in and was told by a supervisor he would have to have a doctor's note before he could return to work. The doctor released him to return to work January 24, 2008, and prior to the start of his shift he had his girl friend, Angel West, call to ask if he was scheduled for that night. She does not know with whom she spoke but that person told her Mr. Edwards had been fired because he accumulated too many attendance points.

REASONING AND CONCLUSIONS OF LAW:

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 employer's assertion is that the claimant called on January 29, 2008, and told Supervisor Matt Brocket he was quitting. The employer has not presented any written or personal testimony from Mr. Brockert to affirm this. The employer has therefore failed to rebut the testimony of the claimant's witness that he was discharged for absenteeism.

Allsteel did not present any testimony or evidence of the claimant's absenteeism record, the dates of any prior warnings or whether he called in to report his absences after his neck injury. The administrative law judge concludes the claimant was discharged and the employer has failed to meet its burden of proof to establish it was for excessive, unexcused absenteeism. Disqualification may not be imposed.

DECISION:

The representative's decision of March 25, 2008, reference 01, is affirmed. Kirk Edwards is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs