

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUGUSTUS K NYEMAH
Claimant

APPEAL NO: 14A-UI-11411-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 10/12/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 3, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the November 24 hearing in Des Moines. No one on the employer's behalf appeared for the hearing. During the hearing, Claimant Exhibits A, B and C were offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late February 2014. The claimant worked full time at various jobs during his employment. The claimant understood that in accordance with the written policy the employer would discharge an employee if the employee accumulated 18 attendance points in a rolling calendar year. (Claimant Exhibit A.)

After the claimant received approval to take eight hours off on September 26, he learned the employer no longer considered him an employee because he had not been at work for several days. (Claimant Exhibit C.) Since the claimant had been at work and had reported problems punching in, the employer informed the claimant his points would be recalculated. The claimant understood that after the employer verified he had been at work he had a total of 12 points as of September 28.

On September 29, the claimant notified the employer he was unable to work. When the claimant returned to work on October 1, he provided a doctor statement that indicated the claimant should be excused from work on September 29 and 30. (Claimant Exhibit B.) The claimant understood the employer gave him six points for this absence, but did not understand why. On October 9, 2014, the employer discharged the claimant for violating the employer's attendance policy by accumulating too many attendance points.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer may have justifiable business reasons for discharging the claimant for accumulating 18 attendance points that were assessed based on the employer's attendance policy. Since the employer did not participate at the hearing, the evidence does not establish why the claimant received the 12 points he had as of September 28. On September 29 and 30, the claimant did not intentionally fail to report to work as scheduled. Instead, he was unable to work and a doctor excused him from work these days. The claimant properly reported this absence to the employer. The evidence does not establish that the claimant committed work-connected misconduct. Therefore as of October 12, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's November 3, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that the claimant committed work-connected misconduct. As of October 12, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer' account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs