

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAMONT GRICE**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL NO. 11A-UI-11869-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/07/11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated August 31, 2011, reference 01, that held he was discharged for excessive unexcused absenteeism on August 8, 2011, and benefits are denied. A hearing was held on October 4, 2011. The claimant participated. Terri Rock, HR representative, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time manufacturing associate from September 13, 2010 to August 9, 2011. The claimant received the employer attendance policy that provides for discipline. The claimant was issued a written warning on July 19, 2011 for taking excessive breaks and failing to clock-out when leaving the property for smoke breaks on July 16 and 19. He was issued a final warning on August 4 for an altercation with a team leader.

The claimant failed to communicate an absence from work on August 8 that the employer considers a no-call/no-show to work. Claimant called an employer number but received no response, and there was no answering machine to leave a message. When he reported to work the next day, he was questioned about his absence. He showed the employer the number he called and was advised it was not a correct number to call to report an absence. He was discharged for attendance issues.

## 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(8) provides:

(8) Past acts of misconduct. 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(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 administrative law judge concludes that the employer did establish misconduct in the discharge of the claimant on August 9, 2011, for excessive "unexcused" absenteeism, and attendance issues.

The employer warned the claimant about attendance policy violations on July 19 for taking excessive breaks and failing to clock-out for smoke breaks. He received a final warning about two weeks later for an altercation that was the day after he was a no-call/no-show to work. Four days later he knew he failed to communicate an absence from work that is the same as a no-call/no-show and it constitutes job disqualifying misconduct in light of the employer discipline.

**DECISION:**

The decision of the representative dated August 31, 2011, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on August 9, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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