

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA D MCDONALD**  
Claimant

**APPEAL NO. 14A-UI-07628-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 06/29/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Joshua McDonald (claimant) appealed a representative's July 17, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with TPI Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 15, 2014. The claimant participated personally. The employer participated by Joshua McDonald, Human Resources Coordinator.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 28, 2013, as a full-time production worker. The claimant signed for receipt of the employer's handbook on August 28 and September 28, 2013. The handbook indicates an employee who accumulates eighteen attendance points will be terminated. The employer issued the claimant warnings for attendance on December 19, 2013, May 31, and June 8, 2014. The employer notified the claimant that further infractions could result in termination from employment. The claimant's attendance issues were due to medical issues that were properly reported or being a minute or two late due to the long drive to work.

The employer has a policy that states an employee will receive three attendance points for each day the employee calls in absent. If the employee actually has an office visit with a doctor, receives a note, and the note excuses the employee for the days the employee was absent from work, the employee will only receive one attendance point. The policy only applies to multiple days of medical absence. There is no point reduction for the employee who provides a doctor's excuse for one day's absence.

On June 15 and 16, 2014, the claimant properly reported his absences due to a medical condition. The employer assessed the claimant three attendance points for each day. The

claimant had an office visit with a Dr. Bishop who wrote a note excusing him from work on June 15 and 16, 2014. The claimant provided the note to his supervisor when he returned to work on June 17, 2014. The employer did not reduce the claimant's attendance points when the claimant provided the note. Without the note the claimant's exceeded eighteen points. On June 30, 2014, the employer terminated the claimant.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incidents of absence were properly reported medical issues which occurred on June 15 and 16, 2014. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's July 17, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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