IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIDGMAN, LORIKAY, K
Claimant

TPI IOWA LLC
TPI IOWA
Employer

APPEAL NO. 13A-UI-04154-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/17/12
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Lori Bridgman filed a timely appeal from the March 29, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on May 13, 2013. Ms. Bridgman did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Danielle Williams, Human Resources Coordinator, represented the employer. Exhibits 2 through 12 were received into evidence.

ISSUE:

Whether Ms. Bridgman was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lori Bridgman was employed by TPI Iowa as a full-time production worker from July 2012 until March 15, 2013, when Taylor Johnston, Human Resources Generalist, discharged her for attendance. The workplace was in Newton. Ms. Bridgman resided in Le Grand, 36 miles from the workplace. Another employee, Ed Richey, provided Ms. Bridgman with transportation to work. Mr. Richey lived in Marshalltown. Thus, Mr. Ritchie would have to drive from Marshalltown to the Le Grand to collect Ms. Bridgman and then would have to drive from Le Grand to Newton.

The final absence that triggered the discharge occurred on March 4, 2013, when Ms. Bridgman and Mr. Richey were both absent due to inclement weather. Ms. Bridgman properly notified the employer of the absence by calling the designated phone number prior to the scheduled start of her shift. Ms. Bridgman returned to work on March 5 and continued to report for work until March 15, when she was discharged.

In making the decision to discharge Ms. Bridgman from the employment, the employer considered prior absences and reprimands. The next most recent absence had been on January 28, when Ms. Bridgman was tardy for personal reasons. Ms. Bridgman had also been tardy for personal reasons on August 4, October 22, December 4, 10, 11 and 17, and on January 6. Ms. Bridgman had additional absences for personal reasons on August 2,

September 22, October 2 and 20, and January 26. Ms. Bridgman had additional absences, for illness properly reported, on September 4 and 5, October 17, and November 20. The employer issued multiple warnings for attendance over the course of the employment.

In December 2012, the employer posted a notice in the workplace concerning inclement weather. The notice stated, in relevant part, as follows: "Your personal safety is our top priority, so please use common sense and your best judgment when traveling to work in inclement weather. In the event of a schedule change, announcements will be made on local TV stations and KCOB radio."

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination

of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See Gaborit v. Employment Appeal Board, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. Gaborit, 743 N.W.2d at 557.

The weight of the evidence in the record fails to establish a current act of misconduct. The weight of the evidence indicates that the final absence on March 4, 2013 was attributable to inclement weather that prevented Mr. Richey from collecting Ms. Bridgman for work and it made both employees absent. The weather was beyond Ms. Bridgman's control. Accordingly, the final absence on March 4 was an excused absence under the applicable law and cannot serve as the basis for disqualifying Ms. Bridgman for unemployment insurance benefits. The administrative law judge further notes that the employer waited 11 days from the date of the absence to discharge Ms. Bridgman from the employment. The administrative law judge further notes that the next most recent absence that factored into the discharge occurred on January 28, 2013, more than a month prior to the final absence. Because the evidence fails to establish a current act of misconduct, the administrative law judge need not further consider the prior absences.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bridgman was discharged for no disqualifying reason. Accordingly, Ms. Bridgman is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Bridgman.

DECISION:

The Agency representative's March 29, 2013, reference 03, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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