

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BART INGEBRITSON

Claimant

APPEAL NO: 13A-UI-12332-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC

Employer

OC: 09/29/13

Claimant: Appellant (1)

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Bart Ingebritson (claimant) appealed an unemployment insurance decision dated October 23, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from TPI Iowa, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 25, 2013. The claimant participated in the hearing. The employer participated through Taylor Johnston, Human Resources Generalist.

ISSUE:

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

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 employed as a full-time manufacturing associate from June 25, 2012 through September 24, 2013. He was discharged from employment due to violation of the employer's attendance policy with a final incident on September 16, 2013 when he called in for personal business. The claimant was last warned on August 20, 2013, that he faced termination from employment upon another incident of unexcused absenteeism.

The claimant received a verbal warning for attendance on February 5, 2013; a written warning for attendance on March 11, 2013; and a final written warning for attendance on April 14, 2013. The employer went to a new attendance point system on July 15, 2013 and employees who had attendance issues were advised they would go to zero points if no absences occurred between the dates of July 15, 2013 and July 31, 2013. If the employee had an absence, they would incur an additional six attendance points added to the three points received for that day's absence. The new system provides for termination after the employee accumulates 18 attendance points.

The claimant was absent for personal business on July 22, 2013, but due to an oversight, he only received three points instead of nine. He received six points for personal absences on July 28, 2013 and August 5, 2013, after which a verbal warning was issued. The claimant

received three points for an absence due to illness on August 13, 2013, as well as a final written warning. He received three points for an absence due to illness on September 11, 2013 and the final three points for a personal absence on September 16, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 24, 2013 for 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. 871 IAC 24.32(7).

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The unemployment insurance decision dated October 23, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs