

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA A TRIPP
Claimant

APPEAL NO. 08A-UI-02874-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOULDED FIBRE TECHNOLOGY
Employer

**OC: 02/24/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Moulded Fibre Technology (employer) appealed a representative's March 17, 2008 decision (reference 01) that concluded Lisa A. Tripp (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2008. The claimant participated in the hearing. Joshua Goodman, a representative with UTMC, appeared on the employer's behalf. Debbie Geronzin, the office manager, and Todd Giddings, the claimant's supervisor, testified on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on May 14, 2007. The claimant worked as a full-time inspector packer. Giddings supervised the claimant. At the time of hire, the claimant received a copy of the employer's policies, including the attendance policy. (Employer Exhibit Two.) The employer's attendance policy is a no-fault policy and defines excessive absenteeism. (Employer Exhibit One.)

During the claimant's employment, she had the following unscheduled absences: (Employer Exhibit Four.)

May 22, 2007	left early	absent 6 hour and 6 minutes
June 15, 2007	absent	8 hours
July 1, 2007	tardy	4 hours
July 16, 2007	tardy	37 minutes
July 26, 2007	tardy	20 minutes

August 21, 2007	left early	4 hours and 23 minutes
September 7, 2007	left early	3 hours and 48 minutes
September 17, 2007	absent	8 hours
September 21, 2007	absent	8 hours
October 12, 2007	absent	8 hours
November 4, 2007	absent	8 hours
December 4-6, 2007	absent	24 hours
February 11, 2008	absent	8 hours
February 12, 2008	left early	5 hours and 43 minutes
February 13, 2008	left/came back	26 minutes.

The employer gave the claimant a final written warning for attendance issues on November 12, 2007. On December 11, 2007, the employer gave the claimant another warning for attendance issues and a two-day suspension for continuing attendance issues. (Employer Exhibit Five.) The claimant understood her job was in jeopardy if she did not work as scheduled.

When the claimant was absent on February 11, 2008, she properly notified the employer she was ill and unable to work. On February 12, the claimant left work early after she received a call at work that her fiancée had been injured at work. The claimant went to the hospital where her fiancée had been taken. Giddings did not prevent the claimant from leaving work on February 12, but reminded her that if she left work it would be counted as an attendance occurrence. On February 13, the claimant asked if could leave work to take care of a female issue that she had not been prepared to handle at work. Again, the employer did not prevent the claimant from leaving but reminded the claimant it would be considered an attendance occurrence. The claimant went home to pick up some personal hygiene items and returned to work.

Management reviews employees' payroll records every Tuesday. On February 19 or 20, the employer noticed the clamant had three unscheduled absences the week before. As a result of the claimant's repeated failure to work as scheduled, the employer discharged her on February 22, 2008. (Employer Exhibit Three.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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).

After her two-day suspension in December, the claimant understood her job was in jeopardy. The claimant properly notified the employer she was ill and unable to work as scheduled on February 11, 2008. The employer testified if this had been her only absence since December 11, 2007, the employer still would have discharged her. The law specifically states that being ill does not constitute work-connected misconduct. The facts also show that the claimant left work early on February 12. The claimant left only after receiving a call at work that her fiancée had been injured at work and was going or had been taken to the hospital. The next day, the claimant left work for less than 30 minutes to pick up some personal hygiene items she needed that day and did not have at work. The claimant's unscheduled absences from work on February 11, 12, and 13 do not amount to an intentional or substantial disregard of the employer's interests. Instead, the claimant established reasonable grounds for these absences. While the employer discharged the claimant for business reasons, the facts do not establish that the claimant committed a current act of work-connected misconduct. As of February 24, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's March 17, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of February 24, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw