

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES L WORTHINGTON
Claimant

TPI IOWA LLC
Employer

APPEAL 15A-UI-08403-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 15, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was discharged for excessive unexcused absenteeism after being warned. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2015. Claimant James Worthington participated on his own behalf. Employer TPI Iowa LLC participated through Human Resources Coordinator Danielle Williams. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a production employee beginning September 25, 2013, and was separated from employment on June 15, 2015, when he was discharged. In December 2014, the claimant requested intermittent leave under the Family Medical Leave Act (FMLA). His health care provider stated he would experience three episodes a month lasting one to two days in length.

In April 2015, the claimant's condition worsened and he required additional time off. However, he only called in more often and did not provide any additional documentation or information to the employer about his absences. Any absences he took above and beyond the previously approved intermittent leave were counted as unexcused absences. By May 6, 2015, he accrued a total of 20 attendance points which is above and beyond what the employer's attendance policy allows and he could have been terminated.

On May 14, 2015, Human Resources Coordinator Danielle Williams met with the claimant. She explained he was in danger of being terminated. He stated the heat had aggravated his condition and he needed additional leave. She gave him new FMLA documents to have his provider complete requesting the additional time. She explained they needed to be returned by

May 29, 2015 and, if it covered the previous absences, she would reclassify them from unexcused to excused absences

By May 29, 2015, Williams had not received the documents back from the claimant. She left him a voicemail asking him to call her. He returned her call and explained that his regular physician declined to fill out the FMLA documents as he had an appointment with a specialist on June 9, 2015. Williams told him she would have preferred a phone call when he knew his paperwork was going to be late as, by that point, the claimant had only worked seven days in the entire month of May giving him a total of 35 attendance points.

On June 1, 2015, Williams sent a certified letter, return receipt requested, to the claimant outlining the steps she had taken and notifying the claimant that if he did not contact the employer by 12:00 p.m. on June 10, 2015 he would be terminated. The claimant was notified of the certified letter on June 2, 2015, but he did not collect the letter. The employer did not hear from the claimant by June 10, 2015. Williams attempted to contact the claimant multiple times by leaving him voicemail messages.

On June 15, 2015, Williams received notice from the claimant's supervisor that the claimant had returned to work. She directed his supervisor to send him home and have him contact her the next day when she was in the office. The claimant called her the following day. He confirmed he had seen the specialist, but did not have the completed FMLA documents as the specialist was trying new medication that she wanted to confirm before filling out the documentation. The claimant could not explain why he had not contacted Williams following his appointment when he knew that he would not have the documents. Williams told him she could not extend his deadline any further and he was terminated for excessive unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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(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 employer has the burden of proof in establishing disqualifying job misconduct. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to

the employer. Excessive unexcused absenteeism is one form of misconduct. See *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). The absenteeism must be both excessive and unexcused. The concept includes tardiness and leaving early. Absence due to matters of personal responsibility such as transportation problems or childcare issues, is considered unexcused. See *Harlan v. Iowa Dep't of Job Serv.*, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See *Higgins, supra*, and Iowa Admin. Code r. 871-24.32(7). The employer has the burden of proof to show misconduct.

Typically, an absence related to properly reported illness is excused as illness is not volitional act and is not deemed as misconduct. However, in this case, the claimant was not solely discharged for missing days in excess of the employer's policy. He was discharged for not properly reporting the absences after he failed to abide by the employer's absenteeism and FMLA policy. He was given numerous chances to properly report his absences to the employer to have them converted to excused absences. The employer has credibly established that the claimant engaged in deliberate acts that constituted a material breach of his duty to the employer. Additionally, the claimant was on notice that continued absenteeism, without proper documentation, would lead to his termination. The claimant failed to properly report his absences which meant they were unexcused absences. The claimant had excessive unexcused absences. Therefore, benefits are withheld.

DECISION:

The July 15, 2015, (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/css