

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLYDE J SHINE
Claimant

APPEAL NO. 12A-UI-09612-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 07/08/12
Claimant: Appellant (2)

Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

Clyde Shine filed an appeal from a decision dated July 31, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on September 11, 2012. The claimant participated on his own behalf. Cathy Shine observed the proceedings but did not offer testimony. The employer, TPI Iowa, was paged in the main waiting area at 8:29 a.m. and 8:44 a.m. No one responded and the employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

Clyde Shine was employed by TPI Iowa from 2009 until July 11, 2012 as a full-time production worker. On July 10, 2012 Human Resources Manager Terry Rock notified the claimant there had been a complaint against him by a Hispanic coworker. He was accused of using racial slurs. Ms. Rock said the incident would be investigated.

The claimant acknowledged that he had gotten into a verbal dispute with his coworkers but denied that any racial epithets were made by him to anyone. On July 11, 2012 Ms. Rock informed Mr. Shine by phone that he had been discharged for inappropriate conduct.

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 to establish the claimant was discharged for substantial job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant has denied any and all wrongdoing and the employer did not participate in the hearing to provide any testimony to the contrary. The administrative law judge concludes that the employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of July 31, 2012, reference 01, is reversed. Clyde Shine is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

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