

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL G QUICK
Claimant

APPEAL NO. 13A-UI-13059-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 10/27/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 15, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 16, 2013. The claimant did participate. The employer did participate through Danielle Williams, Human Resource Coordinator.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning August 29, 2011 through September 24, 2013 when he was discharged. The claimant had been given a copy of the employer attendance policy and knew that each time he missed a twelve-hour work shift he would accumulate three points. When an employee reaches eighteen points they are discharged. During his two years of employment, the claimant was given and signed twelve separate warnings for attendance. The claimant was scheduled to work on Sunday, September 8 and missed work due to personal business. He missed work again on the next Sunday, September 15. The employer's payroll and attendance records run one week behind. The claimant should have been written up for missing work on September 8 on September 17. The employer had the written warning ready for discussion with the claimant, but the claimant missed work that day again for personal business. When the claimant returned to work he was given the warning for missing work on September 8 and signed it on September 21. The next Tuesday, September 24 the employer met with the claimant and he was awarded six additional points for missing work without excuse on September 15 and 17. That brought the claimant's total to eighteen points and pursuant to prior numerous warnings the claimant was discharged.

The claimant was not a credible witness on his own behalf as he changed his testimony whenever confronted with facts that brought into question his truthfulness. The last absence for

the claimant on September 17 was for his own personal business and is not considered excused.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The November 15, 2013, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css