

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN I BORTS
Claimant

APPEAL NO. 10A-UI-10593-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 06/27/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

TPI Iowa, L.L.C. (employer) appealed a representative's July 27, 2010 decision (reference 01) that concluded John I. Borts (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2010. The claimant participated in the hearing. Terri Rock appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 28, 2009. He worked full-time as a manufacturing associate in the employer's wind blade manufacturing facility. His regular schedule was 5:00 a.m. to 1:00 p.m., Monday through Friday. His last day of work was June 25, 2010. The employer discharged him on that date. The reason asserted for the discharge was poor attendance.

The employer's primary reason for termination was a conclusion that the claimant had missed 32.9 hours of work in the last three months. About 24 of those hours were from April 12, April 13, and April 14. The claimant had understood that these days were being excused because the employer did not have sufficient work for all employees, so that he could take those days off without repercussion to do some other outside work with his lead person, even if the employer was not generally sending other employees home those days due to lack of work. The other times the employer considered were the claimant taking 1.5 hours for personal business on May 5, being three minutes late on May 20, being 34 minutes tardy on May 26, taking an hour for personal business on June 1, and taking five hours for personal business on June 9. Additionally, there was some question about the claimant's taking two days off on June 14 and June 15 for his wife's grandmother's funeral; the employer asserted that the

claimant had originally claimed it was his own grandmother, but the claimant denied that assertion and no direct evidence was presented to the contrary.

The employer asserted that as a result of the accumulated missed time and the question about the days missed for the claimant's wife's grandmother's funeral the claimant was given a warning for attendance on June 22 advising him that further incidents could result in discharge. The claimant was not given or informed of this warning. On June 25 the claimant was 13 minutes tardy due to an accident on the interstate that had tied him up in traffic for about 20 to 25 minutes. As a result of this additional incident after the supposed June 22 warning, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is poor attendance. Excessive unexcused absences can constitute misconduct; however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of his job. Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Tardies are treated as absences for purposes of unemployment insurance law. Higgins, supra. First, the claimant had not previously been effectively warned that future incidents could result in termination, so there is no showing of intent. Higgins, supra. Further, under the circumstances of this case, the claimant's tardy on June 25 was beyond his control and unintentional. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 27, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw