

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD E GIBSON
Claimant

APPEAL NO. 12A-UI-02338-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 01/01/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 29, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 26, 2012. Claimant participated. Employer participated through human resources coordinator ,Danielle Williams. Employer's Exhibit 1 was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a manufacturing associate on second shift from May 31, 2011 and was separated from employment on January 3, 2012. His last day of work was December 29, 2011. On that date he left before the end of the shift at 9:00 p.m. He clocked out at 8:29 p.m. He left without permission from or notice to either the shift supervisor or the team leader. A temporary layoff was scheduled from the end of that shift through sometime in April. Had he completed his shift, he would have been eligible for that layoff. Most of his absences fell on one side or the other of a weekend or holiday. He had multiple tardiness related to his commute. There were four verbal and one written warnings for attendance issues. (Employer's Exhibit 1)

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.

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 in a timely manner as to when and why the employee is unable to report to work. Employer has established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence of leaving early without permission, in combination with claimant's history of unexcused absenteeism and tardiness, is considered excessive. Benefits are withheld.

DECISION:

The February 29, 2012 (reference 02) decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css