

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY C DIENG**  
Claimant

**APPEAL NO. 14A-UI-08920-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 08/03/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mary Dieng (claimant) appealed a representative's August 25, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with TPI Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 3, 2014. The claimant participated personally through Joseph Malual, Interpreter. The employer participated by Danielle Williams, Human Resources Coordinator. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 8, 2012, as a full-time production worker. The claimant signed for receipt of the employer's handbook most recently in September 2013. The employer issued the claimant a verbal warning on January 28, 2014, for being late in returning from breaks. On May 11, 2014, the employer issued the claimant a verbal warning for having acquired six attendance points. The employer notified the claimant that further infractions could result in termination from employment. On June 28, 2014, the employer issued the claimant a written warning for having acquired twelve and a half attendance points. On July 28, 2014, the claimant was absent from work because she did not have childcare. The claimant had been tardy ten times and absent full and partial days seven times. At that point she had accumulated twenty attendance points. The employer terminated the claimant on August 8, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

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 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 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 representative's August 25, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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