

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB J KENDALL**  
Claimant

**APPEAL NO: 12A-UI-08738-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 01/22/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 10, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his witness, Wesley Barton. Danielle Williams and Emily McMann appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 27, 2011. He worked full time in production. The employer's attendance policy informs employees they must maintain their attendance at 97 %.

During his employment the claimant called in sick on August 10, 21, September 21, January 10, 2012, April 17, 18, 19 and 22. He did not call or report to work on October 20 and May 29. He was less than an hour late on August 31, September 5, 9, January 4, 5, 11, March 25, April 24, 30 and June 12. He was two hours late for work on August 17. The employer gave him several warnings for his attendance. The most recent warning the claimant received was on June 6. He received this because of his May 29 absence. The June 6 warning informed the claimant that this was his final written warning. His absentee rate was 94.6 % and the expected rate was 97 %. The June 6 warning also informed the claimant that he must immediately improve his attendance or he could be discharged. (Employer Exhibit One.)

On June 12 he was 20 minutes late for work because he had to wait for a train. The employer told employees that if they were late because of a train, this tardy would be excused. The train tracks are by the employer's facility and employees sometimes have to wait for a train. The claimant's mother drives him to work. Since she gets off work shortly before he needs to get

work, the claimant does not have much time to go to his locker, punch in and report to his work station. When the claimant was late for work, he usually was less than ten minutes late.

When the claimant got to work on June 12 he told his supervisor he was late because he had to wait for a train. A lead worker knew the claimant had to wait for a train. The employer did not excuse the claimant on June 12 because he was the only employee 20 minutes late for work. When the claimant was waiting for the train, he noticed other cars turned around and went to work another way.

On June 19, the employer discharged the claimant because he had been again late for work on June 12. During his employment, the claimant had been tardy 12 times or 2.87 hours.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

When the claimant received his final written warning on June 6, he knew or should have known that if he had any further attendance issues his job was in jeopardy. The claimant's transportation arrangements sometimes made it difficult for him to get to work on time. But it was the claimant's responsibility to report to work as scheduled. Since the claimant did not have his mother or anyone else to verify that he waited for a train for more than 20 minutes, the evidence establishes the claimant was late for other reasons or would have been late even if he had not waited for a train. This is supported by the fact no other employees were late that day. The claimant's failure to take reasonable steps to report to work on time after he knew his job is in jeopardy constitutes work-connected misconduct. Therefore, as of June 17, 2012, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's July 10, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 17, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs