

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA S RAPPA
Claimant

APPEAL NO. 14A-UI-00210-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 11/24/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 7, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on January 30, 2014, by telephone conference call. The claimant participated personally. The employer participated by Danielle Williams, human resources coordinator. The record consist of the testimony of Danielle Williams; the testimony of Diana Rappa; and Claimant's Exhibit A.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures wind blades at its location in Newton, Iowa. The claimant was hired on May 29, 2013, as a full-time production worker. The claimant's last day of work was November 8, 2013. She was terminated on November 20, 2013, for violation of the employer's attendance policy.

The absences that led to the claimant's termination were as follows:

August 30, 2013	Illness
September 4, 2013	No transportation
September 5, 2013	No transportation
November 6, 2013	Illness
November 8, 2013	Illness

The employer has an attendance policy that calls for termination upon reaching 18 points. Points are assessed for any unexcused absence, which includes personal illness. The claimant was off work after November 8, 2013, due to her mother's illness.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which 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. On the other hand 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. Although the claimant violated the employer's attendance policy and reached the threshold for termination, her final absence on November 8, 2013, was for personal illness. Under Iowa law, an absence for personal illness is considered an excused absence if the claimant properly notified the employer. Unless the final absence is an unexcused absence under Iowa law, the claimant cannot be disqualified

from receiving benefits, even if the claimant is discharged pursuant to an employer policy. Disqualification only occurs when the discharge is for a current act of misconduct and since the final absence was for personal illness and therefore an excused absence, the claimant was not discharged for a current act of misconduct. Benefits are therefore allowed provided the claimant meets all other eligibility requirements.

DECISION:

The decision of the representative dated January 7, 2014 reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs