

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN W MCKINNEY**  
Claimant

**APPEAL NO: 10A-UI-16714-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 05/16/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Brian W. McKinney (claimant) appealed a representative's December 3, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with TPI, Iowa L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 18, 2011. The claimant participated in the hearing. Terri Rock appeared on the employer's behalf. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 November 3, 2008. He worked full time as a manufacturing associate. His last day of work was November 8, 2010. The employer discharged him on that date. The reason asserted for the discharge was returning late from break after prior warnings.

The claimant had received a first written warning for returning late from break on August 18, 2010, and a second and final written warning for the same issue on October 6, 2010. When the claimant was brought in on the afternoon of November 8 and discharged, he was told it had been for returning late from break that morning. The claimant acknowledged that he had come back to his work station about ten minutes beyond the allowed ten minutes, but this was because as he and his work partner were returning from break they were stopped by their team leader to give them some work instructions; this discussion took nearly ten minutes.

At the hearing the employer provided second hand information that the final incident of returning late from break occurred on Saturday, November 6, rather than on Monday, November 8. The claimant's first hand testimony was that upon discharge he was told the final incident had

occurred that same day, November 8, at the time he was delayed by his team leader in returning from break. He denied there had been any other incident of returning late from break on November 6.

#### **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 which 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 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. 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 his returning late from break after prior warnings. The employer relies exclusively on the second-hand account from a shift leader to indicate that the final incident occurred on November 6, and was not the incident where the claimant was delayed in returning from break by his team leader; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the shift leader might have been mistaken in the date he used in his report to the employer, whether the shift leader who reported the incident had been on November 6 was credible, or whether the employer's witness might have misinterpreted or misunderstood the shift leader's report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant had a final incident of returning late from break other than the occasion on November 8 caused by being stopped by his team leader, which the administrative law judge treats as excused for purposes of determining whether misconduct occurred. 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 December 3, 2010 decision (reference 01) is reversed. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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