

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY N BANAK**  
Claimant

**APPEAL NO. 13A-UI-10681-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 08/18/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 9, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on November 8, 2013. Claimant participated. Employer did participate through Tahler Johnston, Human Resources Generalist.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was working full-time hours as a manufacturing associate beginning on October 1, 2012 through August 19, 2013 when she was discharged. The claimant had a long history of poor attendance. The employer switched from a percentage attendance policy to a straight points system. The change took place at the beginning of June 2013. Because the claimant had such poor attendance she was told when the change was made that she had to have no more unexcused absences through the end of August 2013 in order to keep her job. The claimant was assigned six points at the beginning of the new policy due to her poor attendance under the old policy. The only employees who started under the new policy were those who did not have attendance issues. On July 15 the claimant was given a letter at work putting her on notice that her poor attendance was placing her job in jeopardy. Her direct supervisor Dave worked with her to help her improve her attendance. The claimant was given extra chances to improve that were not afforded to other employees. If the claimant did miss work for three days on July 21, 22, and 23 the employer did not count it against her in making the decision to discharge. The claimant missed work due to personal issues on July 29 and July 30. The claimant received a warning under the employer's system on August 6, and then the employer realized that she was still considered a temporary employee due to her poor attendance and that she had reached twelve attendance points so she was discharged on August 19. In less than one year of employment the claimant received five formal warnings for attendance, including over ten instances of tardiness.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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 as to 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 September 9, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs