

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RACHID BOUHSSINE**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL 20A-UI-02555-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/23/19**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Rachid Bouhssine (claimant) appealed a representative's March 16, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the TPI Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2020. The claimant participated personally. The employer participated by Danielle Williams, Senior Human Resources Coordinator.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**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 August 12, 2019, as a full-time production associate. He signed for receipt of the employer's handbook on July 30, 2019.

On February 21, 2020, the claimant had a back problem and notified the employer of his absence due to a medical issue. The claimant went to his physician who restricted him from working from February 21, 2020, through March 1, 2020. The doctor's note released him to return to work without restrictions on March 2, 2020. On February 22, 2020, the claimant properly reported his absence due to his medical issue. He also reported his medical excuse and his return to work date.

The employer's standard operating procedure is to have one of five shift supervisors listen to the call in messages of workers and record the information. The supervisor does not record the reason for an absence unless it might qualify for Family Medical Leave (FMLA). If a worker calls in sick/lack of transportation/personal issues, the absence is listed as "PTO-unscheduled". If the worker reports that he will be away from work for a number of days due to medical issues,

the shift supervisor is supposed to refer the information to the human resources department for consideration of FMLA.

The supervisor taking the messages did not refer the claimant's information about his doctor's note to the human resources department. The claimant returned to work on March 2, 2020, and his badge did not work. The employer allowed him into the building and he gave his doctor's note to the human resources generalist. The human resources generalist said she just found out about the note. The claimant had already been taken out of the system for failure to report on February 24, 25, and 26, 2020. The claimant's employment had ended.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

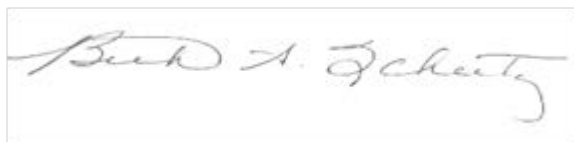
Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred between February 21 and March 1, 2020. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's March 16, 2020, decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



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Beth A. Scheetz  
Administrative Law Judge

April 23, 2020  
Decision Dated and Mailed

bas/scn