

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA L LAMPERT
Claimant

APPEAL NO. 13A-UI-02473-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 01/27/13
Claimant: Appellant (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 27, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 27, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Danielle Williams participated in the hearing on behalf of the employer. Exhibits A through E and One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from August 1, 2011, to January 28, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge after progressive discipline for not maintaining 97 percent attendance standard.

The claimant received a verbal warning on October 2, 2012, for having 94.5 percent attendance after she was absent on September 25 and 28 due to illness. The claimant properly notified the employer. The claimant received a written warning on October 23, 2012, for having 94 percent attendance, after she was absent on October 15 and 16. The absences were for medical reasons supported by a medical excuse. The claimant gave proper notice on each day. The claimant received a final warning on January 8, 2013, after she was absent due to illness on January 2, 2013, with proper notice to the employer.

On January 26, 2013, the claimant became sick and vomited at work. She was sent home early by her team leader.

On January 31, 2013, the employer discharged the claimant for violating the attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The claimant's absences were due to illness or other reasonable grounds and were properly reported. On her last day of work, January 26, she was sent home by a team lead who recognized she was too sick to work. While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated February 27, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css