

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER R MEYER
Claimant

TPI IOWA LLC
Employer

APPEAL NO. 13A-UI-05445-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/07/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 26.14(6) – Request to Re-schedule

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated April 29, 2013, reference 01, that held he was discharged for repeated tardiness on April 3, 2013, and benefits are denied. A hearing was held in Des Moines, Iowa on July 2, 2013. The claimant did not participate. Danielle Williams, HR Coordinator, submitted written documents in lieu of personal participation for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

The issue is whether the hearing should be re-scheduled.

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time production employee on the B shift from August 15, 2011 to March 30, 2013. He worked three 12-hour days Wednesday through Friday 5:00 p.m. to 5:00 a.m., and every other Saturday, 5:00 p.m. to 5:00 a.m. The claimant received and signed for the employer attendance policy that contains progressive disciplinary action for violations on August 15, 2011.

The employer issued claimant a final written warning for excessive tardiness on January 13, 2013 that he received. It lists seven tardiness occurrences within a 12-month rolling period. He was warned that a further discipline could result in discharge. He was issued an attendance final warning on March 21 that he received. Claimant had been issued three tardiness warnings during a period from October 2 to October 30, 2012.

Claimant clocked in late on March 30, 2013, and he was suspended pending an attendance record review. Claimant contended that the employer time clock was not accurate. On April 3 the employer terminated claimant for repeated tardiness in light of progressive discipline.

The hearing notice below the time date lists the hearing street location in Des Moines, Iowa. Claimant requested the in-person hearing. Claimant missed the hearing because he went to Marshalltown, Iowa that is not listed as the hearing location.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(6) provides:

(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire ex parte as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party's late arrival.

Claimant's request to re-schedule the hearing is denied. He traveled to the wrong hearing location because he failed to read the hearing notice location that is not a good cause to miss a hearing.

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 administrative law judge concludes employer established misconduct in the discharge of the claimant on April 3, 2013, for excessive "unexcused" tardiness.

The employer issued claimant a final warning for excessive tardiness on January 19 with an admonition a further occurrence could lead to termination. The employer time clock showed he

was late on March 30. The employer reviewed claimant's contention the clock was not working properly and it concluded it was on that date. This late to work was the seventh tardiness that meant claimant was subject to termination and given the final warning constitutes job disqualifying misconduct.

DECISION:

The decision of the representative dated April 29, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on April 3, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css