

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAT CAVAN
Claimant

APPEAL NO. 12A-UI-02629-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 01/29/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Bridgestone Americas Tire filed a timely appeal from a representative's decision dated March 5, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on April 2, 2012. The claimant participated. The employer participated by Jim Funcheon, division human resource manager; Tom Barragan, human resource service manager; and Josh Miller, mixing area manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Pat Cavan was employed by Bridgestone Americas Tire from August 17, 1998, until January 20, 2012, when he was discharged from employment. Mr. Cavan worked as a full-time production worker and was paid by the hour.

The claimant was discharged when the employer reasonably concluded that Mr. Cavan had provided false statements to the company regarding a work injury. Mr. Cavan had stated to the company that he had injured his nose when he tripped while disembarking a forklift unit and injured his nose as he fell. Subsequently, a review of company security tapes and a statement by another employee led the employer to conclude that Mr. Cavan had made a false statement. A review of security video tape showed Mr. Cavan operating the forklift and striking a solid object with sufficient force to throw Mr. Cavan forward on the forklift and to raise the back wheels of the forklift as it struck the object. Another company employee admitted, when questioned, that at Mr. Cavan's prompting he had agreed to provide a false statement to the company verifying Mr. Cavan's account of the injury to his nose. The claimant was discharged for making a false report to the company.

It is the claimant's position that his nose injury was sustained as he had stated to the company. It is the claimant's further position that the employer's evidence is insufficient to establish that he was injured otherwise.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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(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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The evidence in the record establishes the claimant was discharged based upon the employer's reasonable belief that Mr. Cavan had engaged in making false statements to the employer about a work injury that he had sustained to his nose. The claimant had stated that he was injured as he disembarked a forklift by falling and striking a portion of the machine. Subsequently, another employee admitted that he had agreed to support the claimant's false statement regarding the work injury and stated to the company that the claimant had not been

injured by falling off the forklift as it had been reported. A subsequent review of security cameras verified that Mr. Cavan had been involved in a work-related mishap that day where the claimant had struck a solid object at a high rate of speed with the forklift, throwing Mr. Cavan forward on the forklift and causing the rear wheels of the forklift to come off the ground.

The administrative law judge concludes that the employer was reasonable in its conclusion that the claimant had intentionally made false statements to the company about the nature and the cause of his work injury. This conduct showed a willful disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees and was disqualifying under the provisions of the Employment Security Law.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated March 5, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw