

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHALE B MADIT
Claimant

APPEAL NO. 09A-UI-14765-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**Original Claim: 06/28/09
Claimant: Respondent (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 25, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 29, 2009. The claimant participated. The claimant was represented by Jim Hamilton. The employer participated by Joyce Kain, human resources manager; Justin Steward, final finish supervisor; and Andrew Levy, quality assurance technician. The record consists of the testimony of Joyce Kain, the testimony of Justin Steward, the testimony of Andrew Levy, the testimony of Michael Madit, and the testimony of Jason Stegman. Mr. Stegman was subpoenaed to testify on behalf of the claimant.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a tire manufacturer. The claimant was hired on June 4, 2004 and on the date of his termination, August 26, 2009, the claimant was an inspector. His shift ran from 11:00 p.m. to 7:00 a.m.

The events that led to the claimant's termination began with a write-up that was given to the claimant concerning some defective tires that he had allowed to pass inspection. The defective tires were found by Andrew Levy, a quality assurance technician. The defect would have prevented the tires from holding their inflation. An inspector marks each tire with his initials and that is the way Mr. Levy determined which employee had improperly inspected the tires.

The claimant was given his write-up on August 21, 2009. When the claimant was given the write-up, Mr. Levy was present together with the claimant's supervisor, Justin Steward, and Jason Stegman, the union steward from Local 164 of the United Steelworker's Union.

Mr. Stegman is an electrician and was not familiar with the problem with the tires. He asked to see the tires and be shown the defect. The claimant's tires, together with defective tires from other employees, had been sent up to the work area.

While Mr. Stegman, Mr. Levy, and Mr. Steward were examining the tires, the claimant yelled at the group. Mr. Steward could not hear the claimant and moved closer. The claimant yelled at Mr. Steward and said "I'll get you back" and "I don't give a shit about the tires." The claimant initially had his work knife in his right hand and was waving it. He put the knife back in its sheath but he made comments to Mr. Steward that "you're a woman, everyone knows you're a woman." Mr. Stegman stepped between the claimant and Mr. Steward. He was able to calm the claimant down.

The claimant went to get his lunch and he was then asked to leave the plant. The claimant took his time gathering his belongings and was then escorted from the plant. The matter was reported to Joyce Kain, human resources manager. She conducted an investigation. The employer has a zero-tolerance policy for workplace violence and for using threatening, intimidating, or threatening language. The claimant was aware of the policy. The claimant was terminated on August 26, 2009, following the investigation. A hearing was held pursuant to the terms of the collective bargaining agreement. The claimant's termination was upheld following this hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). Threats that an employer should stay out of a worker's way or he would be sorry constituted misconduct in Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995). The Court stated that an employer has the right to expect decency and civility from its workers and that evidence of threats could be found both in words and body language. The employer has the burden of proof to show misconduct.

In this case, the greater weight of the evidence established that the claimant used profanity and other offensive language towards his supervisor and that his conduct could be reasonably interpreted as potentially violent. Mr. Levy and Mr. Steward both testified that the claimant became aggressive when he saw them examining tires along with the union steward, Mr. Stegman. Both heard profane and offensive statements. Mr. Stegman did not confirm their testimony about the claimant's language, but he did step in between the claimant and Mr. Steward in an effort to deescalate the situation. There was no evidence that Mr. Steward initiated the confrontation or that he did anything that the claimant might have interpreted as violence toward him.

The claimant's language and aggressive conduct toward Mr. Steward were deliberate choices on his part and constitute a material breach of the employer's right to expect decency and civility from its workers. The employer had a zero-tolerance policy against workplace violence and offensive language. The claimant violated these policies by his language and conduct. Benefits are denied.

DECISION:

The representative's decision dated September 25, 2009, reference 01, is reversed. Unemployment insurance benefits shall be 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw