

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENATE VARVEL
Claimant

APPEAL NO: 13A-UI-02652-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 02/03/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Renate Varvel (claimant) appealed a representative's February 28, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Bridgestone America's Tire (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2013. The claimant participated in the hearing. Jim Funcheon appeared on the employer's behalf and presented testimony from one other witness, Tom Barragan. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on December 23, 1994. She worked full time as a production worker at the employer's Des Moines, Iowa storeroom. Her last day of work was January 20, 2013. The employer discharged her on January 29, 2013. The stated reason for the discharge was violation of the employer's intoxicant policy.

The employer's policy prohibits employees from possessing intoxicants on the employer's premises. The claimant normally worked a 6:00 a.m. to 6:00 p.m. schedule. On January 20 the claimant had gotten off work early, at about noon, because she needed to take care of moving from one home to another. After she finished moving, she went to a bar and consumed alcohol. At about 5:30 p.m. she returned to the employer's premises to pick up a rider who was getting off work. On the way she hit a mailbox, and a sheriff's deputy followed her route and found her in the employer's parking lot. She was charged with OWI; a search of the car revealed containers of alcohol. As a result of this incident, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's returning to the employer's premises under the influence of alcohol and with containers of alcohol in the vehicle shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 28, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 20, 2013. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs