

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUKE G JOHNSON
Claimant

APPEAL NO. 12A-UI-04405-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 03/11/12
Claimant: Respondent (2r)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Bridgestone Americas Tire filed a timely appeal from a representative's decision dated April 9, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on May 10, 2012. Claimant participated. The employer participated by Mr. Jeff Higgins, Labor Relations Section Manager. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Luke Johnson was employed by Bridgestone Americas Tire from July 15, 2003 until March 15, 2012 when he was discharged from employment. Mr. Johnson worked as a full-time production worker and was paid by the hour. His manager was Mr. Chuck Holder.

Mr. Johnson was discharged when the employer reasonably concluded that he had not been truthful and had provided false statements to the company about an ongoing investigation related to damage to toolboxes and theft of tools at the company facility.

The company had been plagued with repetitive toolbox break-ins and missing tools and therefore began a lengthy investigation into the matter. The claimant and other employees were questioned about their knowledge regarding the toolbox break-ins. Mr. Johnson responded to the employer's inquiries by stating that he had no knowledge and in effect had not participated in any manner in breaking into any toolboxes on company property. Subsequently, the company's labor relations manager meticulously reviewed security tapes and discovered what he considered to be clear depictions of Mr. Johnson in the act of what appears to be breaking into one or more toolboxes.

Mr. Johnson was called to a second meeting and confronted with the information about the security camera depictions. At that time the claimant admitted to breaking into or assisting in breaking into two toolboxes. The employer then made a decision to terminate Mr. Johnson for previously providing false information to the company and because of his conduct regarding the toolbox break-ins.

It is the claimant's position that the company misunderstood his previous answers and misunderstood what the security camera depictions showed. It is the claimant's position that he was assisting another employee who had forgot his key and was assisting in helping to jimmy the lock off the toolbox. It is the claimant's further position that it is not unusual for employees to use the tools out of another individual's toolbox if the employees believe that the other employee had abandoned it.

REASONING AND CONCLUSIONS OF LAW:

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

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 insurance 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 Ct. App. 1992).

The evidence in the record establishes that Mr. Johnson and other employees were aware of an ongoing issue with toolboxes being broken into and tools being stolen at the Bridgestone Americas Tire facility. When questioned about the matter Mr. Johnson specifically denied any knowledge about breaking into toolboxes or the removal of tools. Subsequently when confronted with evidence that the company had security camera depictions showing him in the act of breaking into a toolbox, Mr. Johnson then admitted that his previous statements were untrue admitting that he had broken into or assisted breaking into two toolboxes.

Although the administrative law judge is aware that it is the claimant's position that he was assisting another individual to break off a lock because the other individual had lost his key, the administrative law judge nonetheless concludes that the claimant's failure to provide candid and accurate statements to the employer during the investigation showed a willful disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. The claimant's failure to disclose his part in breaking into toolboxes when questioned by the employer violated the company's reasonable expectations that employees would provide truthful statements to the company during an official investigation. Unemployment insurance benefits are withheld.

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.

DECISION:

The representative's decision dated April 9, 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 and is otherwise eligible. The issue of whether the claimant must repay unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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