

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH A ELLIS
Claimant

APPEAL NO. 11A-UI-16338-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE AMERICAS TIRE
OPERATIONS LLC**
Employer

**OC: 11/20/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(4) – Disciplinary Suspension

STATEMENT OF THE CASE:

Deborah Ellis filed a timely appeal from a representative's decision dated December 16, 2011, reference 01, that denied benefits finding that she had been placed on a disciplinary suspension for violation of company rules. After due notice, a telephone conference hearing was held on January 24, 2012. The claimant participated. The employer participated by Mr. Jim Function, Mr. Josh Miller, Mr. Dick Roth and Mr. Tom Berrigan.

ISSUE:

At issue is whether the claimant was placed on disciplinary suspension 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: Deborah Ellis began employment with Bridgestone Americas Tire Operations LLC on May 16, 1995. Ms. Ellis was employed as a full-time production worker and is paid by the hour. The claimant was placed upon disciplinary suspension on November 22, 2011 for violation of company safety rules. Subsequently the claimant was reinstated to her regular job position with the company after completing the disciplinary suspension that ended December 15, 2011.

Ms. Ellis was placed upon disciplinary suspension after an investigation by the company showed that Ms. Ellis had violated a serious safety rule by using a portion of her forklift to push a steel door closed on the company's "cement room." The "cement room" at the employer's facility contains highly volatile and explosive chemicals and materials. The employees are warned not to bring up mechanically powered equipment within ten feet of the entrance to the cement room because of the danger of explosion. The company believed that the claimant's act of nudging the steel door closed with the steel legs of the forklift created a substantial danger of causing a spark which could have led to catastrophic consequences. A decision was therefore made to suspend Ms. Ellis from work for a period of time based upon the claimant's conduct.

It is the claimant's position that some duties of her job require her to operate the forklift within a ten-foot radius of the entrance to the cement room doors and that her act of closing the door with the forklift was an isolated incident of poor judgment.

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 proving establishing disqualifying misconduct. See Iowa Code section 96.6-2.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

In this matter the evidence establishes that Ms. Ellis was issued a disciplinary suspension from work for violation of a serious and known company safety rule. The claimant had noticed a steel door on the company's "cement room" open and used the forklift she was operating to nudge the steel door closed instead of dismounting from the forklift and closing the door manually. The claimant's conduct caused a serious danger of creating a spark in the highly volatile and explosive area.

The administrative law judge concludes based upon the evidence in the record that the magnitude of the claimant's carelessness showed a disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of Employment Security Law. The claimant is therefore disqualified from the receipt of unemployment insurance benefits based upon the disciplinary suspension that was issued for her conduct.

DECISION:

The representative's decision dated December 16, 2011, reference 01, is affirmed. 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 her weekly benefit amount, and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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