

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM B CURRY
Claimant

APPEAL NO. 12A-UI-04184-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 03/11/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Bridgestone Americas Tire filed a timely appeal from a representative's decision dated April 6, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 8, 2012. Claimant participated. The employer participated by Mr. Jeff Higgins, Labor Relations Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Adam Curry was employed by Bridgestone Americas Tire from February 7, 2011 until March 14, 2012 when he was discharged from employment. Mr. Curry worked as a full-time forklift operator and was paid by the hour.

The claimant was discharged after he failed to report to a mandatory disciplinary meeting that was scheduled for March 12, 2012. The meeting was held to consider whether to keep the claimant as an employee because of driving incidents that had taken place while operating the company's forklifts.

Mr. Curry was aware of the meeting and was aware of the mandatory nature of the meeting but did not report because he overslept. The claimant had been on a rotating shift and was unable to wake up in time to attend the meeting. The employer was unwilling to reschedule the disciplinary meeting. The claimant was not discharged because of the previous issues related to the manner in which he operated the company forklifts but because he missed the mandatory meeting on March 12, 2012. The claimant had been previously warned about work performance but had not been warned about attendance.

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 not.

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. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 claimant in this matter was discharged not because of previous issues with the manner in which he operated company equipment but because the claimant failed to attend a mandatory disciplinary meeting that was scheduled for 8:00 a.m. on March 12, 2012. Although the claimant was aware of the meeting he failed to attend because he had inadvertently overslept. The claimant had been working rotating shifts, working nights and he had been unable to awake to attend the early morning meeting. Although the claimant had requested that the meeting be rescheduled the employer chose not to do so.

The Supreme Court in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence did not constitute misconduct even in a case where a worker disregarded specific instructions to inform the employer of his status.

While the decision to terminate Mr. Curry may have been a sound decision from a management viewpoint the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated April 6, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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