

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKIE E DYER

Claimant

APPEAL NO. 14A-UI-04485-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE

Employer

OC: 03/30/14

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 22, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 2, 2014. Although the claimant submitted a telephone number, the claimant was not available at the telephone number provided. The claimant also provided the telephone number of a witness. The witness also did not respond when called. The employer participated by Mr. Jim Funcheon, Division Human Resource Manager and Mr. Jeff Higgins, Section Manager. Also participating as potential witnesses were Mr. Chuck Holder and Ms. Samantha Peterson. Employer's Exhibits A through E 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 insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Rickie Dyer was employed by Bridgestone Americas Tire from March 10, 2004 until March 14, 2014 when he was discharged for exceeding the permissible number of attendance infractions allowed under company policy and the company Union Bargaining Agreement. Mr. Dyer was employed as a full-time production worker working on the company's first shift and was paid by the hour. His immediate supervisor was Roger Mills.

Mr. Dyer was discharged from his employment with Bridgestone Americas Tire after being absent from work on March 9, 2014 due to a back condition. Mr. Dyer notified the employer in advance of his work shift that he would be unable to report due to illness. Mr. Dyer had returned to work on March 7 and 8, 2014 after being off work for a period of time due to illness, invoking the provisions of the Family Medical Leave Act. Mr. Dyer had exhausted all Family Medical Leave time effective March 4, 2014 and had been made aware by the company that any additional absences would not be covered by the Family Medical Leave Act and could result in his termination from employment.

Because Mr. Dyer had often been absent he had exhausted the 504 hours of sick time, vacation time or other leave that was available to him under the provisions of the company Union Bargaining Agreement. Mr. Dyer had received a Step 3 warning on November 3, 2013 warning him that his absences were excessive and that future absences could result in his termination from employment. During the course of his employment Mr. Dyer had often been absent for personal reasons, however, the majority of his absences were reported as absences due to sickness.

Prior to discharging the claimant Jeff Higgins met with the claimant on March 12, 2014. When the claimant could provide no further medical evidence that his most recent absence was covered under the provision of the Family Medical Leave Act, Mr. Dyer was discharged from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is not whether the employer made a correct management decision in separating this claimant from his employment, but whether the final incident that caused the claimant's discharge was disqualifying. It was 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in discharge cases. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a 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).

An employer may discharge an employee for any number of reasons, or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

The evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absence related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, providing the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or other injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system, no-fault absenteeism policy or agreement with workers is not dispositive of the issue of qualification for benefits. Because the final absence for which Mr. Dyer was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The representative's decision dated April 22, 2014, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. 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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