

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY A KALMA
Claimant

APPEAL NO. 12A-UI-13949-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 10/21/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the November 14, 2012 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 18, 2012. Claimant participated. Employer participated through divisional human resources manager, Jim Funcheon, labor relations section manager, Jeff Higgins, and human resources coordinator, Samantha Peterson. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a tire builder from November 17, 1997 and was separated from employment on October 3, 2012. His last day of work was April 27, 2012. He was on accident and sickness (A&S) leave for a non-work-related back injury effective April 28, 2012. He provided the appropriate medical documentation every four weeks, sometimes after a 14-day notice reminder letter, through August 23, 2012. His personal physician, Dr. Alexander of Newton Clinic, and Dr. Hatfield of Des Moines Orthopedics released him to return to work and would not provide further medical excuses or A&S forms. The on-site company doctor, Dr. Trow, would not allow him to return to work stating he "would be back in a week" because he would not be able to perform his work duties, but gave no restrictions or medical referral. On August 27 the employer sent a 14-day letter to which there was no response. On September 10 Peterson notified Higgins of the situation and he instructed her to send claimant a five-day letter to comply or terminated by September 21. Claimant reported to her office and provided a doctor's note late on September 21, which the employer deemed not acceptable. He was given until Tuesday morning, September 25 to provide the A&S form because he had an appointment with Des Moines Orthopedics on September 24 for an epidural injection. When he was done with the appointment the human resources office was closed and he could not get in to see the company doctor so he reported to the union hall and left medical documentation about that appointment there. He went to the company doctor on September 27 and while he was waiting,

Peterson pulled him into Higgins' office who told him his employment status was being reviewed and sent him home.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless

indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The employer placed claimant in an untenable situation by not accepting his two treating physicians' medical releases, not allowing him to return to work because of the company doctor, yet requiring him to obtain outside medical excuses for the employer's A&S form. Since his treating physicians had released him and were unwilling to complete that paperwork, and the company doctor did not treat him, set work restrictions, waive the A&S paperwork pending his release of claimant, or refer him to another medical practitioner, the employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The November 14, 2012 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css