

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RIEN T BROOKS**

Claimant

**APPEAL NO: 13A-UI-13057-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**

Employer

**OC: 10/27/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 26.14(7) – Late Call

**STATEMENT OF THE CASE:**

Rien T. Brooks (claimant) appealed a representative's November 18, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Bridgestone Americas Tire (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held at 8:30 a.m. on December 17, 2013. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Jeff Higgins appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. The record was closed at 8 44 a.m. At 8:46 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Should the hearing record have been reopened? Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant received the hearing notice prior to the December 17, 2013 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant directly contacted the Appeals Section was on December 17, 2013, 16 minutes after the scheduled start time for the hearing. The claimant asserted that she had called into the Appeals Section when she received the hearing notice. However, the claimant did not have a control number, which the Appeals Section issues to each

party who calls in for a hearing to verify that they have called. An entry of a call from the claimant does not appear in the telephone call-in logbooks maintained by the Appeals Section. Neither did the claimant recall to whom she had spoken, nor had she been given the instructions routinely given to parties who call in as to what they should do if they do not get a call at the designated hearing time. The administrative law judge concludes that the claimant did not call in to the Appeals Section in advance of the hearing as directed by the hearing notice.

The claimant started working for the employer on October 1, 2012. She worked full time as a warehouse worker at the employer's Des Moines, Iowa facility, working an overnight shift from 6:00 p.m. to 6:00 a.m. on a schedule of rotating days. Her last day of work was the shift that ended on the morning of October 25, 2013. The employer suspended her at that time, and discharged her on October 30, 2013. The stated reason for the discharge was a violation of the employer's policy prohibiting cameras in the workplace.

Earlier during the claimant's shift the claimant had been involved in an incident with a forklift where the forklift was tipped up on end. The claimant took a picture of the tipped forklift with her cell phone camera and posted it on Facebook. When she was confronted, she denied that she had taken a picture of the tipped forklift itself, but asserted that she had only taken a picture of an authorized picture the claimant's supervisor had taken to document the accident. Upon further investigation by Higgins, the labor relation section manager, he determined that the picture taken and displayed by the claimant was not the same as either of the authorized pictures taken by supervisor.

The claimant's use of her cell phone for any purpose on the floor was separately a violation of company policy, but alone would not have been considered severe enough to result in discharge. However, the employer's camera policy, of which the claimant was on notice, specifies that "to protect our proprietary equipment/processes and to protect the personal privacy of our employees, unauthorized use of a personal camera capable cell phone to capture, record or transmit any image taken on plant property without prior approval of management will result in immediate termination." As a result, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. *Id.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the December 17, 2013 hearing was after the hearing had been closed. Although the claimant intended to participate in the hearing, she failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's taking and transmitting a picture from the employer's workplace with her cell phone camera as prohibited by company policy shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

#### **DECISION:**

The representative's November 18, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 25, 2013. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs