

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARYEE F MULBAH
Claimant

APPEAL NO. 16A-UI-05177-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 04/10/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Saryee Mulbah (claimant) appealed a representative's May 2, 2016, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Bridgestone Americas Tire (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 18, 2016. The claimant participated personally. The employer participated by Tom Barragan, Human Resources Section Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 5, 2013, as a full-time production worker. The claimant signed for receipt of the collective bargaining agreement. On May 14, 2015, the employer issued the claimant a written warning for absences for personal business on August 10, 31, September 27, December 16, 2014, April 26, and May 3, 2015. On July 23, 2015, and January 7, 2016, the employer issued the claimant a written warning for absences due to properly reported medical issues. On April 5, 2016, the employer issued the claimant a final written warning for an absence due to personal business. The employer notified the claimant each time that further infractions could result in termination from employment.

On April 7, 2016, the claimant went to the Department of Motor Vehicles and discovered there was a warrant for his arrest. He was incarcerated on April 8, 2016, and could not report his absence to the employer. He explained to the judge that he was burned in an incident but the officer mistakenly did not record him as the victim. The claimant was listed as the perpetrator of the crime. The judge released him pending trial on May 19, 2016. The claimant worked through April 11, 2016. On April 15, 2016, the employer sent the claimant a letter of termination due to absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In the claimant's last year of employment, he was absent five times. Two of the absences were properly reported and for medical reasons. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). That leaves us with three absences over a span of 12 months. The claimant's absences cannot be considered excessive. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The representative's May 2, 2016, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs