

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKEY R RITCHIE

Claimant

APPEAL NO. 13A-UI-13214-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION

Employer

OC: 12/16/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 21, 2013, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 30, 2013. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Exhibits One and A were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 16, 2013.

Employer discharged claimant on October 16, 2013 because claimant walked away from his supervisor on October 12. The supervisor was yelling at claimant about work speed. The supervisor had approached claimant no less than six times about work speed. Claimant repeatedly told the supervisor that he was going as fast as he could. Claimant was upset over being yelled at. Claimant asked for another supervisor to intervene because he felt threatened. Claimant walked away, but not off the job, to find another supervisor to help resolve the conflict. Employer suspended claimant and then discharged him for having three suspensions on his record. The final suspension was due to walking away from the supervisor on October 12

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning walking away from a supervisor. Claimant was warned concerning too many suspensions.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was justified in walking away from a supervisor who was verbally abusive. The

supervisor had counseled claimant six times on work speed. The supervisor's tone got out of hand which justified claimant in seeking intervention by another supervisor. Claimant's actions are appropriate as it prevented escalation of an already tense situation. Claimant's sworn testimony is more credible than hearsay offered by employer and as such claimant's testimony is found correct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 21, 2013, reference 05, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs