

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS RICKS
Claimant

APPEAL NO. 14A-UI-03830-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 08/25/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 2, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 30, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Jim Fuchion participated in the hearing on behalf of the employer with witnesses, Jeff Higgins and Pete Goshorn. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from September 5, 2013, to February 22, 2014. He was informed and understood that he was to get authorization and a pass if he left work before the end of his shift.

On February 22, 2014, the claimant was sent to the emergency room after getting some debris in his eye while working. His eye was rinsed out and he was given some eye drops. When he returned to work, his eye was painful so he was sent home.

The claimant reported to work at his scheduled time on February 23, 2014, but had to get a temporary pass because he forgot his badge. When he reported to his work area, the production supervisor told him that he needed to see the company eye doctor. The claimant asked when the eye doctor would be in, but the supervisor referred him to the nurse. The nurse set up an appointment for the claimant to see the eye doctor on Tuesday.

The claimant left work after speaking with the nurse because he understood that the production supervisor wanted him to see the eye doctor before he worked again. The next day that the claimant was scheduled to work was February 26. The claimant did not know he needed a pass to leave work on February 23 because he understood that the supervisor wanted him to see the eye doctor before he worked again.

The employer discharged the claimant on February 25, when he came in to see the eye doctor for failing to get a pass before leaving work on February 23.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). There is no evidence that the claimant intended to quit his employment at any point. The separation was a discharge.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he did not know that he needed a pass to leave work because he understood that the supervisor wanted him to see the eye doctor before he worked again.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated April 2, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs