

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL B MADIT**  
Claimant

**APPEAL NO: 14O-UI-05935-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 09/01/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 6, 2014, reference 01, that held he was discharged for misconduct for violation of a company rule on February 17, 2014, and benefits are denied. A telephone hearing was held on April 3, 2014, and an Administrative law Judge (ALJ) issued a decision on April 8 that reversed and denied claimant benefits. The claimant appealed. The Employment Appeal Board ordered a new hearing on June 9, 2014 but it did not vacate the ALJ decision.

A new telephone hearing was held on July 2, 2014. The claimant, Jim Hamilton, Para-legal, and Dhoal Largin, Interpreter, participated. Jim Funcheon, Division HR manager, Ron McClinton, Mixing Supervisor, and Tom Barragan, HR Section Manager, participated for the employer.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on May 17, 2010, and last worked for the employer as a full-time production employee on January 28, 2014. There was an incident in the mixing department where claimant suffered a foot injury on January 25. The employer investigated and conducted interviews. The employer placed claimant on off-work status beginning January 28 due to the investigation. The employer concluded claimant violated the employer lock-out/tag-out policy while working on clearing a jam from a machine.

Two maintenance persons implemented lock-out/tag-out on the machine while trying to clear the jam. Supervisor McClinton went to claimant who was doing another job nearby and asked him to help clear the jam as he had experience working the machine. Claimant was not given a specific instruction as to what he should do other than help clear the jam. He had operated this

machine before (Fastoon), and he had received lock-out/tag-out training. He made an effort to clear the jam from above.

While trying to clear the jam, the residual energy of the machine caused it to move injuring claimant's foot. The lock-out/tag-out procedure would not have prevented the machine to move in this manner. The employer policy recognizes the release of stored energy could cause injury. The policy states that an employee who has knowingly committed an unsafe act which does or could have resulted in bodily injury or death shall be subject to discharge.

The employer made the decision to terminate claimant on February 17 for the policy violation and he was sent a certified letter stating the reason for termination. Claimant has grieved the termination and it is pending as of the date of this hearing.

### **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.

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).

The administrative law judge concludes employer has failed to establish claimant was discharged for misconduct on February 17, 2014 for violation of the lock-out/tag-out policy.

While claimant did not perform the lock-out/tag-out (LTO) procedure, he did not commit a knowing violation of the employer policy due to the circumstances under which this incident occurred. Claimant was not operating the machine when the jam occurred. A supervisor asked claimant to help clear the jam knowing that two maintenance persons working on the jam had done the LTO. Claimant's injury occurred while he was clearing the jam as instructed, and the residual energy of the machine released when the jam was removed that was not preventable had claimant instituted the LTO.

Claimant was working from above and he denies he violated any safety barrier in trying to remove the jam. The supervisor who testified could not observe claimant and the employer offered no first-hand witness to refute claimant's testimony.

Claimant was discharged for this single incident without any prior discipline. Job disqualifying misconduct is not established.

**DECISION:**

The department decision dated March 6, 2014, reference 01, is reversed and the April 8, 2014 ALJ decision is vacated. The claimant was not discharged for misconduct on February 17, 2014. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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