

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDY A GARDNER
Claimant

APPEAL NO. 07A-UI-03650-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE/FIRESTONE NORTH
AMERICAN TIRE LLC**
Employer

OC: 12/31/06 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Candy A. Gardner (claimant) appealed a representative's April 2, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Bridgestone/Firestone North American Tire LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 7, 2003. The claimant worked full time. The last day the claimant actually worked for the employer was January 17, 2007. The claimant became ill and was unable to work for a while. The claimant understood she was on a medical leave of absence.

On February 18, 2007, the claimant's initial doctor referred her to an allergist. The claimant made an appointment with an allergist on March 3. The allergist changed the appointment to March 10, 2007. On March 6, 2007, the employer notified the claimant that her A & S paperwork had been filed one day too late in February so the employer denied her medical leave and she was discharged. The claimant was not released to return to work until she saw her allergist on March 10, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. When the employer discharged the claimant she had not yet been released to work by her doctor. The facts do not, however, establish that the employer discharged the claimant for work-connected misconduct. As of March 11, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 2, 2007 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 11, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employers account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css