IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ERIC D JOHNSON Claimant **BRIDGESTONE AMERICAS TIRE** Employer	**APPEAL 16A-UI-04640-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/28/15** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2016. The claimant, Eric D. Johnson, participated personally. Witness Dale Hopkins testified on behalf of claimant. The employer, Bridgestone Americas Tire, participated through Divisional Human Resources Manager Jim Funcheon; Human Resources Section Manager Tom Barragan; Tire Room Foreman Aaron Williams; and Labor Relations Section Manager Jeff Higgins. Employer's Exhibits 1 through 7 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker from January 30, 2012 until his employment ended on March 22, 2016. His direct supervisor was Roger Mills prior to him switching jobs in January of 2016 and then his supervisor was an employee named Brett.

For the majority of claimant's employment he would drive a fork lift. In July of 2015 the employer installed a program called "shock watch" on the fork lifts. The employees referred to the fork lifts as "jeeps". Claimant was not assigned a specific jeep but drove what was available on each day. Employees many times fought over which jeep they wanted to drive because they believed that some were more sensitive than others.

The shock watch involved an alarm mechanism that would trigger when an amount of shock was registered. There were four different levels of shock that would trigger including low, medium, high and severe. The jeep will stop operating when there is a high or severe shock registered. It is then necessary for the supervisor to manually restart the jeep before an employee can continue working.

If a high or severe incident is registered then the incident is automatically reviewed and discussed by a committee for determination if a disciplinary action should be given to the employee. It is unnecessary under the employer's policy for damage to property or injury to occur in order to trigger an incident. See Exhibit 1. The registering of a high or severe shock is sufficient. See Exhibit 1.

The committee meets weekly to review videotape (if available) and statements of witnesses (if available) of each incident to determine whether or not disciplinary action against the driver will be taken. The committee does not necessarily consist of the same people from week to week. None of the committee members involving claimant's incidents testified.

In this case claimant's shock watch went off at a high or severe level on October 3, 2015. This was due to claimant hitting the rail/pole when he had a load of rubber and went too far in to the area. See Exhibit 6. Claimant received a disciplinary action titled Letter of Discussion for this incident.

On January 13, 2016 claimant's shock watch went off at a high or severe level when he backed into the wall. See Exhibit 5. Claimant received a disciplinary action titled Letter of Discussion for this incident. See Exhibit 5. Claimant reported that this area he was working in was a very tight space. See Exhibit 7.

Sometime after January 13, 2016 and before March 1, 2016 claimant's shock watch went off at a high or severe level when his rear tire hit a rack in the aisle. Claimant was issued a Final Letter of Reprimand for this incident. See Exhibit 4.

Sometime between March 1, 2016 and March 3, 2016 claimant's shock watch went off at a high or severe level. It is unknown when this incident occurred or what occurred. However, instead of termination, claimant agreed to a Condition of Employment, which stated that should one more impact occur before February 25, 2017 then he will be terminated from employment.

On March 11, 2016 claimant's shock watch went off at a high or severe level. This occurred when claimant was delivering more tread to another co-worker and he hit a pole. The pole was black and not painted yellow like other poles had been. Claimant misjudged how close he was to the pole and bumped into it. Claimant was discharged under the employer's progressive disciplinary policy for having too many incidents involving shock watch. Prior to shock watch being installed on the jeeps claimant had not had any incidents with driving the jeeps.

When the committee reviews each shock watch incident it makes a determination as to whether or not the driver was operating the jeep safely or was operating it against policy. No evidence regarding the committee's notes, meeting minutes, or discussion was entered. The only witness who had first-hand knowledge about the committee meetings was Mr. Hopkins.

The committee, and Mr. Hopkins, did review the videotape as it related to the claimant's final incident on March 11, 2016. The videotape did not show that the claimant was driving too fast but showed that claimant lost sight of the pole when he turned into the space. The video did not

show the actual impact. The pole was black and not painted yellow to be more visible to drivers. Mr. Johnson further testified that the shock watches have gone off for going over bumps and seem to have different sensitivity levels. There was no testimony provided as to what threshold of shock a high or severe would register.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the claimant did not quit. Claimant was discharged from employment.

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(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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. *Milligan v. Emp't Appeal Bd.*, No. 1-383 (Iowa Ct. App. filed June 15, 2011). In reviewing past acts as influencing a current act of misconduct, we should look at the course of conduct in general, not whether each such past act would constitute disqualifying job misconduct in and of itself. *Attwood v. Iowa Dep't of Job Serv.*, No. 85-1418, (Iowa Ct. App. filed June 4, 1986). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. March 23, 2016).

The employer based its discharge on the current act of claimant bumping a black pole when he turned a corner. This space was tight to operate the jeep in. The pole was not painted yellow like others poles are to increase visibility. Claimant was only discharged because he received a certain number of shock watch incidents within a specific time period. His actions on March 11, 2016 do not rise to the level of misconduct that was a deliberate act that was indicative of the deliberate disregard of the employer's interest or of the employee's duties and obligations to the

employer. It was not substantial misconduct for purposes of disqualifying claimant from receiving benefits. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The April 18, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/pjs