

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAYMOND W DEMAYO**  
Claimant

**APPEAL NO. 13A-UI-08026-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 06/09/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 27, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 14, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Tom Berrigan participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from November 15, 2010, to June 11, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge for excessive absenteeism.

In 2012, the claimant was late on April 22, August 16, October 10, and November 12. In 2013, he was late on February 13 and April 16. In 2012, he was absent on August 1 and 2 and December 18. In 2013, he was absent on March 19 and March 28. His absences were properly reported. The claimant was disciplined about his absences.

The claimant was absent from work on May 4 and 5 due to back pain with proper notice to the employer. He was given a chance to obtain Family and Medical Leave Act (FMLA) paperwork from his doctor, but the paperwork was not enough to cover his absence because it said the claimant was likely to miss one day per month.

The employer discharged the claimant on June 11, 2013, for excessive absenteeism.

The claimant called the Appeals Bureau at 12:40 p.m. after the hearing concluded and explained that he received the voice mail messages left when he was called for the hearing, but his phone did not ring.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether good cause has been shown for the claimant's nonparticipation in the hearing under 871 IAC 26.8(3) so that the hearing should be reopened. The claimant obviously was not prepared to take the call at the scheduled time of the hearing. No good cause to reopen the hearing has been shown.

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

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. 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 unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The claimant's final absences were due to medical reasons and were properly reported to the employer. The fact that the claimant's FMLA paperwork did not cover more than one day a month does not change the result here.

**DECISION:**

The unemployment insurance decision dated June 27, 2013, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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