

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY GAYE
Claimant

APPEAL NO: 12A-EUCU-00007-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE AMERICAS
TIRE OPERATIONS LLC**
Employer

**OC: 01-09-11
Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 29, 2011, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 6, 2012. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jim Funcheon, division human resources manager; Jeff Higgins, labor relations manager; and Bryan Davies, cell unit leader, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time tire processor for Bridgestone Americas Tire Operations from March 21, 2011 to December 5, 2011. On November 23, 2011, Cell Unit Leader Bryan Davies asked the claimant to take a suspect cure tire to the suspect curing tires holding area. The claimant stated that was not his job. Mr. Davies reminded the claimant of the employer's mantra of safety, quality, and production, and that the claimant needed to take the tire to the holding area. The claimant stated Mr. Davies was "picking on" him because it was not his line, but Mr. Davies had asked several other drivers to take suspect tires to the holding area from other lines without incident. Mr. Davies drove to another area, saw the union steward and explained the situation to him, stating he was going to give the claimant a few minutes to do the task he was directed to perform and if he did not do so, he was going to stop his time, call security and have him walked out of the building. The claimant drove by and saw Mr. Davies speaking to the union steward and repeated it was not his job to take the suspect tire from another line to the holding area and he was not going to do it. Mr. Davies called security and had the claimant escorted out and stopped his time. The employer's policy states that failure or refusal to follow direct instructions given by any member of management is insubordination and

the employee will have his time stopped, be escorted from the building by security, and will be discharged. After reviewing the situation, the employer terminated the claimant's employment December 5, 2011.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

871 IAC 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant refused a direct instruction given to him by a member of management without good cause for doing so. Mr. Davies had not issued any written warnings to the claimant in the past and there is no evidence he was "picking on" the claimant. Drivers are often asked to transport suspect tires from lines they are not working on at the time to the holding area and Mr. Davies request was not unreasonable. The claimant violated the employer's policy regarding insubordination and, under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an

intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The December 29, 2011, reference 03, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw