

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD A BUHR
Claimant

APPEAL NO: 12A-UI-11598-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 08/26/12

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Bridgestone America's Tire (employer) appealed a representative's September 18, 2012 decision (reference 01) that concluded Chad A. Buhr (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2012. The claimant participated in the hearing. Jim Funcheon appeared on the employer's behalf and presented testimony from two other witnesses, Todd Troll (M.D.) and Jeff Higgins. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on October 17, 1994. He worked full time as a tire builder at the employer's Des Moines, Iowa facility working on a 6:00 a.m. to 6:00 p.m. shift on a rotating schedule. His last day of work was August 20, 2012. The employer suspended him after that day and discharged him on August 22, 2012. The stated reason for the discharge was falsification of a report of an alleged work injury.

The claimant had been off work from August 14 through August 19. After returning to work at 6:00 a.m. on August 20, at about 7:55 a.m. the claimant reported to the employer that he had just suffered an injury to his right shoulder when pulling two beads apart. He was sent to the employer's company nurse, who examined him and gave him anti-inflammatory medication and instructions to ice the shoulder and perform restricted duty work. Shortly after sending the

claimant back to work, the company nurse, a registered nurse, reported to the employer that he had concerns about the legitimacy of the claimant's assertion as to how the injury occurred. As a result, the employer determined to suspend the claimant pending further investigation.

The employer receives contractual services from a medical doctor, Dr. Troll, who specializes in physical and occupational medicine. The employer requested that Dr. Troll observe available video surveillance tapes of the claimant's movements in non-work areas on August 12 and August 13 as compared to August 20. There is no surveillance in the claimant's work area itself. Dr. Troll observed that the claimant's use of his right arm on August 12 and August 13 appeared to be free and unrestricted, while his use of his arm on August 20, even prior to the beginning of his work duties, appeared to be restricted and guarded, such as would be the case if the claimant was already suffering from a painful condition. As a result, it was Dr. Troll's opinion that the shoulder injury had occurred prior to the claimant's arrival at work on August 20.

The claimant maintained that the injury had occurred as he had claimed. He testified that after the separation he had sought other medical treatment and that he had been verbally advised by those doctors that his injury was consistent with the manner in which he claims he was injured. However, he did not present any direct or written evidence of any medical opinion to that effect.

Based on the reports and opinions of its company nurse and Dr. Troll, the employer concluded that the claimant had falsified the report of a work-related injury in an attempt to receive treatment for the injury under the employer's workers' compensation program. As a result, the employer discharged the claimant under its policy providing for termination for the making of a false report.

The claimant established a claim for unemployment insurance benefits effective August 26, 2012. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant did falsely report that his injury had been suffered at work. The administrative law judge notes that the findings and conclusions in this matter are not binding on any other legal proceedings or actions involving these parties and these same facts, specifically including any proceedings involving workers' compensation determinations. Iowa Code § 96.6-4. Therefore, it is not outside the realm of possibility that subsequent workers' compensation litigation might produce additional medical testimony which would be sufficient to counter the medical evidence provided in this case and result in a conclusion that the injury was work related. However, based upon the evidence provided in this proceeding, the claimant did falsely report his injury was suffered at work, showing a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's September 18, 2012 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 22, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs