

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAY LOVAN**  
Claimant

**APPEAL NO: 14A-UI-01790-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 01/19/14**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's February 6, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the March 10 hearing. Jim Funcheon, a division human resource manager, and Tom Barragan, the human resource production manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUES:**

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

Has the claimant been overpaid any benefits?

Is the claimant responsible or is the employer responsible for paying back any overpayment of any benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in February 1995. The claimant worked full time as an operator in the mixing department. The claimant understood the employer's progressive disciplinary policy. During the claimant's employment he received a counseling warning and a Step I warning on October 12, 2012 for attendance issues. On January 19, 2013, the claimant received a Step II warning for attendance issues. On June 21, 2013, the claimant received his Step III warning for attendance issues. The claimant understood that his next unexcused absence would result in a Step IV warning and he would be discharged.

After his Step III warning, the claimant was not absent until December 22, 2013. On December 22, his vehicle was stuck in the snow. When the claimant shoveled to get his vehicle out of the snow, he sprained his hamstring. The claimant notified the employer he was unable to work on December 22 because of snow issues.

After December 22, the claimant was not scheduled to return to work until January 3. The claimant went to Florida during the holidays. When he returned to Iowa on January 2, he discovered his home had been burglarized. He learned that a family member had gone into his home. The claimant notified the employer on January 3 that he was unable to work. The claimant stayed home so he could make a police report. Also, his children had been threatened and he needed to stay home to make sure they were safe.

The claimant contacted his union steward because he was concerned about his job after he called in on December 22 and January 3 to report he would be absent. The claimant knew the employer could discharge him for these absences. The claimant understood that his union steward would contact the employer to set up a time for the claimant and employer to talk. The claimant understood he had been discharged by the employer. As a result of believing the employer had discharged him, the claimant did not call or report to work on January 4, 5, 8 or 9. When the employer did not contact him, the claimant went to work on January 13, 2014.

On January 13, the claimant talked to a human resource representative. The employer suspended the claimant so the employer could review the claimant's attendance record. On January 20, Barragan discharged the claimant. The employer discharged him because he did not call or report to work for four days, January 4, 5, 8, and 9 or for violating the employer's attendance policy.

The claimant established a claim for benefits during the week of January 19, 2014. He filed claims for the weeks ending January 25, February 1 and March 8, 2014. He received his maximum weekly benefit amount of \$462 for each of these weeks. The parties did not know if the employer participated at the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The facts indicate the claimant may have been discharged when he did not report to work on January 3, but instead of contacting management or the human resource department to find out if he still had a job after January 3, the claimant assumed he was discharged and stopped calling in and reporting to work. As of January 3 or 4, the employer had not made any decision about the claimant's continued employment. The claimant's failure to call or report to work for four days "sealed" his terminations. The claimant committed work-connected misconduct when he did not call or report to work for four days. If the claimant had called and/or reported to work on January 4, 5, 8 and 9, the outcome may have been different. As of January 19, 2014, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a

claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

Based on this decision, the claimant has been overpaid \$1386 in benefits. The issues of whether the employer participated at the fact-finding interview and who is responsible for paying back the overpayment will be remanded to the Benefits Bureau to determine.

**DECISION:**

The representative's February 6, 2014 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. As of January 19, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The claimant has been overpaid \$1386 in benefits he received for the weeks ending January 25, February 1 and March 8, 2014.

The issues of whether the employer participated at the fact-finding interview and who is responsible for paying back the overpayment is **Remanded** to the Benefits Bureau to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs