

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY D LILLO
Claimant

APPEAL NO. 12A-UI-04583-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE
Employer

OC: 03/18/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Bridgestone, filed an appeal from a decision dated April 11, 2012, reference 01. The decision allowed benefits to the claimant, Troy Lillo. After due notice was issued, a hearing was held by telephone conference call on May 15, 2012. The claimant participated on his own behalf. The employer participated by Human Resources Manager Jim Funcheon, Labor Relations Manager Jeff Higgins, and Area Business Manager Andy Minor

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Troy Lillo was employed by Bridgestone from January 20, 1993 until March 20, 2012 as a full-time production worker. In mid-February 2012, Area Business Manager Andy Minor began to receive complaints from workers in his area about tools being stolen and tool boxes being broken into. He began an investigation that consisted of getting written statements from the employees, which he then submitted to higher managers.

Further investigation was done by interviewing employees and watching video surveillance footage of the area. During this, time Mr. Lillo approached Aaron Holder and returned some tools to him. Mr. Holder had been out on medical leave and when he returned, the lock on his tool box had been broken and tools were missing. Some of the tools are owned by Bridgestone and some are the personal property of workers and both were taken from Mr. Holder then returned by the claimant.

Mr. Lillo was interviewed twice and denied he had stolen any property from other employees. He maintained he had only returned an impact wrench he had borrowed while Mr. Holder was on leave, but the employer's records show about ten different tools were returned. The claimant maintains he did not steal anything, because nothing was taken off the company grounds and he had the right to take company tools from another employee's tool box if he needed them. The employer's policy is for an employee to ask for any tools they need to do their work and not take them from the boxes of other, absent employees.

The claimant was suspended after a second interview on March 16, 2012, until the investigation was concluded. On March 20, 2012, he was discharged by Labor Relations Manager Jeff Higgins.

Troy Lillo has received unemployment benefits since filing a claim with an effective date of March 18, 2012.

REASONING AND CONCLUSIONS OF LAW:

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 claimant maintained he was only guilty of "borrowing" tools belonging or assigned to Mr. Holding while the latter was absent due to a medical leave. If, as he stated, the tool was the property of the company, there would have been no need to return it, which calls his testimony into question.

Regardless of whether the tools belonged to the company, though some were Mr. Holding's private property, there was no reason to remove them from the other worker's locked tool box. Whether or not they were removed from company property is also irrelevant, because these were again taken from Mr. Holding's private, and locked, tool box which was broken into.

The employer has the obligation to provide a safe work environment for all employees, including protection for their personal property. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of April 11, 2012, reference 01, is reversed. Troy Lillo is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw