

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAIZHON A TURNER
Claimant

APPEAL NO. 14A-UI-01404-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 01/05/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Bridgestone Americas Tire filed a timely appeal from a representative's decision dated January 29, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits finding the claimant was dismissed from work for excessive absences but finding that the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on February 27, 2014. Although Mr. Turner supplied a telephone number for the hearing, he was not available at the number provided. Two messages were left. The employer participated by Mr. Jim Funcheon, Division or Human Resource Manager, and Mr. Jeff Higgins, Labor Relations Section Manager. Employer's Exhibits A & B were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Daizhon Turner was employed by Bridgestone Americas Tire from January 14, 2013 until January 10, 2014 when he was discharged for excessive unexcused absenteeism. Mr. Turner was employed as a full-time production worker and was paid by the hour.

Mr. Turner was discharged after he exceeded the permissible number of attendance infractions allowed under the company's attendance policy and in conjunction with the collective bargaining agreement in effect between the company and the union. Under the terms of the policy employees are subject to termination if they exceed nine attendance infraction points within a nine-month period. Infraction points roll off after a specified period has elapsed and the company does not assess infraction points for approved leave such as funeral leave, jury duty, military service, documented court appearances, etc. Employees who supply medical documentation supporting their need to be absent for medical reasons can have consecutive

days of absence due to illness reduced to one infraction point if they supply medical documentation timely.

During the one year that Mr. Turner was employed by the company the claimant had been absent on 17 occasions and had arrived late or left early and/or had excused absences on numerous other occasions. Mr. Turner received warnings from the company that his attendance was unsatisfactory and jeopardizing his employment.

The final incident that caused the claimant's termination from employment took place when Mr. Turner called off work on December 16, 17, and 19, 2013. Mr. Turner was given the opportunity to present medical documentation supporting his need to be absent on those days for medical reasons but failed to provide that documentation until after he was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Absences related to illness of close family members are generally considered to be excused. Absences related to lack of child care are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Law. An employer's point system or no fault absenteeism is not dispositive of the issue of qualification for benefits.

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

In the case at hand, although the evidence in the record establishes that Mr. Turner's attendance was far from satisfactory and that he had been properly warned, the final attendance infractions that caused his discharge were for illness and the claimant had properly reported his impending absences by calling off work prior to the beginning of his work shift. Although the claimant clearly showed a lack of good judgment by failing to display medical documentation supporting his need to be absent for illness until after his termination, the documentation supported the claimant's medical reasons for being absent.

Based upon the application of the facts in this case to the law and the above-cited Supreme Court case, the administrative law judge has no alternative but to find that the claimant was discharged under non disqualifying conditions.

DECISION:

The representative's decision dated January 29, 2014, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs