

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH M LYNCH
Claimant

APPEAL NO: 14A-UI-00553-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS INC
Employer

OC: 12/01/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(9) – Disciplinary Suspension
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 6, 2014, reference 01, that held the claimant was not discharged for a current act of misconduct on November 24, 2013, and benefits are allowed. A telephone hearing was held on February 27, 2014. The claimant participated. Jim Funcheon, HR Divisional Manager, and Jeff Higgins, Labor Relations Section Manager, participated for the employer. Employer Exhibits 1 was received as evidence.

ISSUES:

Whether claimant was suspended for misconduct in connection with employment.

Whether claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on October 25, 1994, and last worked for the employer as an inspector in early November 2013 when an issue arose about a tire he built.

The employer suspended claimant for five, twelve-hour working days (November 13, 14, 18, 19, and 22) for a major return policy violation. The employer received a customer complaint for two defective tires that it traced to claimant as the one who had inspected them.

Claimant returned to work from his suspension on November 23 and has worked continually for the employer through the date of this hearing. Claimant was not unemployed when he filed his claim for benefits the week ending December 7. He was paid a benefit of \$434 for the week ending December 7.

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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The administrative law judge concludes claimant is not eligible for benefits the week ending December 7, 2013, because he was not unemployed. His disciplinary suspension was served for a five-day period ending November 23 with his return to work. He did not file a benefit claim for the week of his suspension when he was unemployed.

Iowa Code § 96.3-7 provides in pertinent part:

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. . . .

The administrative law judge further concludes claimant is overpaid benefits \$434 for the week ending because he was not unemployed.

DECISION:

The department decision dated January 6, 2014, reference 01, is reversed. The claimant was not unemployed the week ending December 7, 2013, and not eligible for benefits. Claimant is overpaid benefits \$434.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs