

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRET R BUELOW**  
Claimant

**BRIDGESTONE AMERICAS TIRE**  
Employer

**APPEAL 16A-UI-12149-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/09/16  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Bridgestone Americas Tire (employer) filed an appeal from the October 31, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon the determination it failed to furnish sufficient evidence to show it discharged Bret R. Buelow<sup>1</sup> (claimant) for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 12, 2016. The claimant participated personally. The employer participated through Division Human Resources Manager Jim Funcheon and Labor Relations Section Manager Jeff Higgins. Employer's Exhibit 1 was received. Official notice was taken of the administrative record, specifically the fact-finding documents for purposes of participation.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits?  
Can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Worker beginning on January 1, 1998, and was separated from employment on October 12, 2016, when he was discharged.

The employer and the workers' union have a collective bargaining agreement (CBA) that outlines the attendance policy and disciplinary steps. The claimant was placed on his third and final step related to attendance on January 12, 2016 for missing work on December 16, 2015 due to a reported non-factory injury or illness. Five of his prior absences that counted towards his discipline were reported by the claimant as non-factory illness or injury. The one prior absence that was not reported as a non-factory illness or injury was a no-call, no-show absence

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<sup>1</sup> Agency records state the claimant's last name is Below. However, during the hearing he reported that his last name is Buelow.

on August 17, 2015. The employer did not rebut the claimant's contention that he missed work due to non-factory injury or illness.

On May 17, 2016, the claimant reported a non-factory injury or illness which lasted through June 7, 2016 and qualified him for an absent and sickness benefit per the CBA. He properly reported his absences per the employer's policy. On June 23 and 24, the claimant notified work that he would be absent and also reported it was due to non-factory injury or illness. On June 27, 2016, the claimant began a leave of absence related to a non-factory injury or illness that lasted through October 10, 2016. He again qualified for the absent and sickness benefit and followed the employer's policy for reporting the absence.

After the claimant reported back to work, Labor Relations Section Manager Jeff Higgins, who was in charge of step disciplinary actions in the claimant's department, received notice that the claimant had two absences not supported by his doctor's documentation on June 23 and 24. Higgins met with the claimant and asked him about his absences. The claimant reported and provided documentation that he had missed work those two days due to his mother-in-law's death. The claimant and his wife received a phone call from hospice on June 23 and were told that if they wanted to speak to her before she passed away then they needed to visit her immediately. The claimant's mother-in-law passed away the following day. The claimant used the non-factory injury or illness code when calling the guard shack as he wanted to make sure the guards recorded a code that would show he called into work and notified it of his absence.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$3,576.00, since filing a claim with an effective date of October 9, 2016, for the nine weeks ending December 10, 2016. The administrative record also establishes that the employer had a first-hand witness for rebuttal and that witness's contact information was provided to Iowa Workforce Development (IWD) the day before the fact-finding interview. The IWD representative did not contact the employer for the fact-finding interview; however, that was through no fault of the employer.

#### **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. Benefits are allowed.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct:

"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.

Iowa Admin. Code r. 871-24.32(1)a. This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury or other reasonable grounds is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. The claimant reported his absences on June 23 and 24, 2016. He was absent due to the impending death and subsequent death of his mother-in-law. Because his absences were for reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The October 31, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment, repayment, and the chargeability of the employer's account are moot.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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