

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH L BARTLETT
Claimant

APPEAL 17R-UI-11133-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

**OC: 08/20/17
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 11, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 16, 2017. The claimant, Kenneth L. Bartlett, participated. The employer, Bridgestone America's Tire, participated through Tom Barragan, Human Resources Section Manager.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a production worker, from February 8, 1995, until August 23, 2017, when he was discharged. On August 17, 2017, claimant was involved in an altercation with co-worker James Clark. Claimant and Clark were having a discussion in the break area. During this conversation, claimant made several comments to Clark about how Clark was speaking "Spanglish" and claimant could not understand him. Claimant stood up to leave the break area, but he then turned around and approached Clark. Claimant reached his arms out, and Clark reached out and hit claimant. Claimant maintains that he was reaching his arms out to hug Clark, and that Clark merely swatted his hand. The employer believes claimant instigated the altercation by commenting about Clark's "Spanglish." When Barragan interviewed Clark about the incident, Clark acknowledged that he was in a bad mood that day and was irritated by claimant's actions. Clark also believed that claimant was going to hit him. The employer discharged both claimant and Clark after this incident.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's testimony mostly credible.

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. Claimant certainly displayed poor judgment in insulting his co-worker's speaking ability and ethnicity. However, this conduct is not sufficient to warrant claimant's discharge from employment. Claimant did not threaten his co-worker, and the employer did not describe anything from the surveillance video corroborating its assertion that claimant was the clear aggressor in the altercation with Clark. The employer has not established that claimant was discharged for disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The September 11, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn