

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH H DANIELS
Claimant

APPEAL NO. 15A-UI-09801-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 08/02/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bridgestone Americas Tires (employer) appealed a representative's August 21, 2015, decision (reference 01) that concluded Joseph Daniels (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 16, 2015. The claimant participated personally. The employer participated by Jim Funcheon, Division Human Resources Manager; Chad Dowling, Area Business Manager for Tire Room; and Jeff Higgins, Labor Relations Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 23, 2003, as a full-time tire builder. The claimant signed for receipt of the employer's handbook on September 23, 2003. The employer did not issue the claimant any warnings during his employment.

On July 22, 2015, the claimant's long-term work partner told him that his neighbor had seen water in the partner's basement. The neighbor thought there could be a water main break. The partner asked the claimant to call into the guard shack with the information so the partner could go home and take care of the problem. At 4:08 a.m. on July 22, 2015, the claimant called the guard shack and said a neighbor of the partner said there may be a water main break at the partner's house. The guard recorded that the partner's neighbor called in.

The employer investigated and suspended the two workers. During the investigation the claimant discovered the partner had been caught sleeping on the job and would have been drug tested if he had remained at work. On July 30, 2015, the employer met with the claimant. On August 3, 2015, the employer terminated the claimant for falsifying a report on July 22, 2015. The co-worker was also terminated.

The claimant filed for unemployment insurance benefits with an effective date of August 2, 2015. The employer did not participate at the fact-finding interview on August 20, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant was tricked into making the call by his co-worker. He told the guard what he thought the neighbor said and the guard recorded the information incorrectly. The employer did not provide sufficient evidence of willful job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witnesses to the events for which he was terminated. The employer provided one written document to support its case.

DECISION:

The representative's August 21, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css