

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN STEFFENS

Claimant

APPEAL NO: 12A-UI-05411-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE

Employer

OC: 04-01-12

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 25, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 1, 2012. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jun Funcheon, Divisional Human Resources Manager; Tom Barragan, Human Resources Section Manager; and Samantha Peterson, Human Resources Coordinator participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time production operator for Bridgestone Americas Tire July 26, 2010, and remains employed in that capacity. He was suspended for 14 working days, between April 5 and May 8, 2012, due to a violation of the employer's falsification policy. On March 16, 2012, the claimant had a dental appointment and took the employer's form to the dentist. A portion of the form that was to be completed by the dentist regarding how long the claimant would be off work was not filled out. Human Resources Coordinator Samantha Peterson told the claimant to take the form back to the dentist, have him complete the form and return it the following day. The claimant returned two hours later with the dentist's part filled in with a pencil. Ms. Peterson noted several "red flags" which included the fact that employees were not allowed to leave the premises during their shifts and that the section of the form to be finished by the dentist was done in pencil and matched the claimant's writing on the top part of the form. Ms. Peterson contacted the dentist's office and was told it did not complete that specific part of the form and the claimant had not come back to have it do so. A few days later Divisional Human Resources Manager Jim Funcheon and Human Resources Section Manager Tom Barragan met with the claimant and told him about the problems with the form. The claimant

initially told the employer after getting the form back from Ms. Peterson, he saw his father, who worked second shift, leaving the plant and gave the form to him to take to the dentist's office. Mr. Barragan explained the employer was going to do a complete investigation, including contacting the dentist's office and viewing video surveillance footage of the gate area, and told the claimant it expected him to be honest. It asked the claimant if there was anything he needed to tell them and the claimant said, "It is what it is. I made a stupid decision. When I left Samantha Peterson's office I went out to my area and wrote it in because I didn't want to get an attendance hit." The employer allowed the claimant to return to work while it decided what the outcome of the situation would be as it usually terminated employees who falsified any company documents. After management and the union discussed the situation the employer decided to suspend the claimant rather than terminate his employment because the claimant admitted his mistake and the dates he entered on the form were the same as the ones the dentist would have entered so there was no gain to the claimant.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

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.

When a claimant is suspended due to an allegation of misconduct, that temporary separation is viewed the same as if it was a termination of employment. The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In this case the claimant admitted to falsifying a medical form in violation of the employer's policy regarding falsifying any company documents. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct as the reason for the suspension. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The April 25, 2012, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css