

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PHAYBOUN LOVANH
Claimant

TITAN TIRE CORPORATION
Employer

APPEAL 14A-UI-12776-H2
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 3, 2014 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on January 13, 2015 in Des Moines, Iowa. Claimant participated and was represented by Jim Hamilton, paralegal. Employer participated through Amy Roussin, Human Resources Manager.

ISSUES:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a tire stocker through November 13, 2014 when he was discharged because his authorization to work in the United States expired. The claimant knew that he had to have authorization from the federal government in order to maintain his employment as he is not a citizen of the United States. The employer is not allowed to keep anyone as an employee once their authorization to work in the United States has expired.

In 2013 the claimant had lost his job because he did not get his authorization to work in the United States renewed in a timely manner. It was the claimant's obligation to insure that his authorization was approved in order to maintain his employment. The claimant's prior loss of his job put him on notice that he needed to make application in a timely manner to keep his job.

Under the federal government rules, an applicant may apply for renewal up to ninety days prior to the expiration of the legal authorization to work in the United States. The claimant's last authorization expired on November 12, 2014. The claimant did not apply for his renewal of his authorization to work in the United States until August 25, 2014. He could have applied as early as August 12, 2014. If the claimant had applied earlier, he would have had his new card prior to the expiration of his old card. The claimant was discharged by the employer on November 13 because his legal authorization to work expired the day before on November 12, 2014. The claimant's authorization to work in the United States was renewed on November 14, 2014.

When the claimant's authorization expired on November 12 the employer contacted the federal government and explained that the claimant was currently on a short-term layoff. The federal government told them that it did not matter that the claimant was laid off; they were required to discharge him because he no longer had legal permission to work in the United States.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant knew he had to have his legal authorization to work in the United State renewed by November 12 in order to keep his job. The claimant should have applied for his renewal by August 12 instead of waiting until August 25, 2014. The claimant's delay in making application was why he did not have his renewal prior to the expiration of his card. The claimant had lost his job once before in 2013 due to his failure to timely apply for renewal of his card. The claimant's failure to get timely permission to work legally in the United States is sufficient job connected misconduct to deny him unemployment insurance benefits. Benefits are denied.

DECISION:

The December 3, 2014 (reference 03) decision is affirmed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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