

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA J SMITH**  
Claimant

**APPEAL NO. 13A-UI-00603-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 12/09/12**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Bridgestone, filed an appeal from a decision dated January 8, 2013, reference 01. The decision allowed benefits to the claimant, Maria Smith. After due notice was issued, a hearing was held by telephone conference call on March 19, 2013. The claimant participated on her own behalf and was represented by James Neal. The employer participated by Division Human Resources Manager Jim Funcheon, Labor Relations Manager Jeff Higgins and Area Business Manager Tim McKnight. .

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Maria Smith was employed by Bridgestone from November 9, 1998 until December 11, 2012 as a full-time utility/production worker. She was on the fourth step of disciplinary action for absenteeism of the final warning on September 16, 2012.

Ms. Smith was absent due to medical reasons on for her overnight shift beginning 6:00 p.m. November 27, 2012. She called in to report her absence as required. The next day she went to the plant and talked with Human Resources Section Manager Tom Barragan about using her emergency flex hours to cover the absence the night before and filled out the proper paperwork. Mr. Barragan said he would “send it through.” She assumed the previous day’s absence was covered and did not get a doctor’s note when she saw her physician later that day.

On December 7, 2012, Ms. Smith met with a human resources representative and her union steward about the absence. At that time she was informed that she could not use the flex hours to cover an absence when she was on a step four disciplinary action. This is the practice of the employer but is not written in the collective bargaining agreement or any employee policies. At that meeting the claimant was asked if she had any documentation to offer in support of her absence on November 27, 2012, and she did not.

After the meeting was a “cooling off period” to allow the employer to review the employee’s file and for the employee to gather any evidence in support of her position. She had nothing further to offer at the time of the second meeting on December 11, 2012, and was discharged for absenteeism.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

The claimant may have exceeded the acceptable number of points or incidents under the employer’s policy. But her final absence was a properly reported illness for which she thought she had adequate flex hours to cover. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). 871 IAC 24.32(8) requires there to be a current, final act of misconduct which precipitates the discharge before disqualification may be imposed. As there was no final act of misconduct, disqualification may not be imposed.

**DECISION:**

The representative's decision of January 8, 2013, reference 01, is affirmed. Maria Smith is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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