

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAM JAY M COOPER
Claimant

APPEAL NO. 16A-UI-09614-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 07/31/16
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Bridgestone Americas Tire filed a timely appeal from a representative's decision dated August 25, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 21, 2016. Claimant participated. A potential witness for the claimant, Mr. Denzel Washington, was not available. The employer participated by Mr. Jim Funcheon, Division Human Resource Manager, and Mr. Jeff Higgins, Labor Relations Manager. Employer's Exhibits A through J were admitted into the hearing record.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jam Jay Cooper was employed by Bridgestone Americas Tire from October 1, 2012 until August 8, 2016 when his discharge from employment took place following a review by the employer and the union bargaining unit.

Mr. Cooper was employed as a full-time production worker and was paid by the hour. Claimant's immediate supervisor was Erin Williams.

At the end of July 2016, it was reported to the claimant's supervisor and subsequently to the company's Human Resource Department, that on July 12, 2016, a first shift worker had found a rubber sample that had been labeled "7-11 A shift 12 AM." It was determined that Jam Jay Cooper was the attendant who was working on the overnight shift that had preceded the morning shift. Based upon the identification of the sample and its location, the employer concluded that Mr. Cooper had failed to take the sample to the company's laboratory for testing on the night of July 11, 2016, although it was his job to do so. Because the testing requirement

is very important to the company to insure that tires that are being produced have the correct compounds and are fit for sale, the employer considered Mr. Cooper's failure to be a serious infraction of the company's work standards. Mr. Cooper at first did not recall the incident because some time had passed before it was brought to his attention. Later, with union representation, Mr. Cooper was given an opportunity to dispute his discharge and did so. On August 8, 2016, claimant's discharge from employment was confirmed by the company.

Employees assigned to the job of transporting samples are given training and a company "template" explaining the exact steps to take identifying picking up and delivering samples to the company's laboratory.

Because Mr. Cooper had been trained and had previously received a progressive warning for failure to follow company procedures, a decision was made to terminate Mr. Cooper from his employment because the claimant's responsibility to locate samples if they were not present to be picked up and the identification on the sample in question had shown that the claimant failed to take the sample to the company's laboratory although at least three picking up sample intervals had taken place that night and yet the sample had not been delivered to the laboratory. Because the testing of samples is essential to the company to insure that tires that are being built have the proper components, failure to provide samples for testing can cause a great number of tires to be withheld from sell. Bridgestone Americas Tire uses a progressive disciplinary policy in conjunction with its agreement with the bargaining unit. Warnings given to employees normally expire after a one-year period unless a warning is given for a similar offense within the year, if so, the issue that the employee is being warned about continues to be active and can lead to further disciplinary actions or termination.

Mr. Cooper had initially received a warning from the company on September 23, 2013 when he had not filled out a tire log book at the end of each shift for over a one month period although the claimant had been instructed to do so. On July 7, 2014, the claimant was warned for failing to follow work procedures by strapping down tires. On February 27, 2014, the claimant was warned for failure to scan in 26 tires into a location resulting in difficulty for the company locating the tires. On July 26, 2015, the claimant was warned for failing to follow work standards by insuring that he was using the proper rubber for the tires being built. On January 18, 2016, Mr. Cooper was warned for failing to properly mark rubber samples that he was collecting resulting in a failed sample. On February 1, 2016, claimant was given a final letter of reprimand when he had turned in three pages of tire logs without filling in the date or shift on any pages as required by the work standards.

It is Mr. Cooper's position that there were no samples to pick up on the night in question from the machine identified by the company. Therefore, he did not take any samples from the machine to the laboratory. It is claimant's belief that the sample later found by the employee the next shift may have been falsely created so that he would be discharged from employment in what Mr. Cooper believes was retaliation for him reporting poor performance of other employees on other work shifts. It is claimant's further position that it was his understanding that after one year elapses previous warnings are no longer in effect and need not be complied with. The claimant maintains that he complained about the conduct of other employees from other shifts to his supervisor but no action was taken. The claimant did not report the issues to the company Human Resource Department prior to the July 12, 2016 incident and did not indicate that reason while his reasons for discharge were being reviewed by the company union process.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases, the employer has the burden of proof to establish disqualifying misconduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was discharged for failure to perform an essential function of his job description which required Mr. Cooper to pick up samples from tire builders each two hours and deliver them to the company laboratory for testing. The employer reasonably

concluded that Mr. Cooper had not picked up and delivered samples on the night in question, after a first shift employee found a sample remaining from 12:00 p.m. the preceding night when Mr. Cooper was on duty and was to be performing those job duties.

The evidence establishes that Mr. Cooper had received training on the job requirements and had demonstrated the ability to properly perform his duties at times. The evidence in the record also establishes a pattern on the part of Mr. Cooper of failing to adhere to the company's reasonable job expectations and repeated warnings for failing to do so. The claimant's failure to properly document tires, to use proper coding and to pick up samples in the past had resulted in progressive written warnings placing Mr. Cooper on notice that his employment was in jeopardy.

Mr. Cooper alleges that the rubber sample that was found later by the first shift worker may have been intentionally placed there by workers on other shifts in retaliation for Mr. Cooper filing complaints about their work. The record establishes that although Mr. Cooper had gone to the company Human Resource Department for other reasons on a number of occasions, he had not complained about activity of this nature and had not cited it as a reason for failing to follow his job requirements prior to the hearing on this matter.

For the above-stated reasons the administrative law judge finds the claimant's testimony to strain credibility and concludes that the employer has sustained its burden of proof in establishing the claimant was discharged based upon a pattern of failing to perform essential job functions after being repeatedly warned. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, because that information is not available, the administrative law judge remands the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment and whether claimant will have to repay the benefits.

DECISION:

The representative's decision dated August 25, 2016, reference 01, is reversed. Claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant has been overpaid unemployment insurance benefits, the amount and whether the claimant is liable to repay those benefits is remanded to the Claims Division for determination and the issuance of an appealable decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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