

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY GAYE
Claimant

APPEAL NO: 120-EUCU-00127-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE AMERICAS
TIRE OPERATIONS LLC**
Employer

**OC: 01/09/11
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 29, 2011, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 5, 2012. The claimant participated in the hearing. Jim Funcheon participated in the hearing on behalf of the employer with witnesses, Jeff Higgins and Bryan Davies.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time as tire processor for the employer from March 21, 2011 to December 5, 2011. The claimant was informed and understood that under the employer's work rules, failure or refusal to follow direct instructions given by any member of management was insubordination and grounds for immediate termination.

On November 22, 2011, the claimant was working as a forklift operator. Bryan Davies, the cell unit leader, asked the claimant to take a suspect cure tire to the suspect curing tires holding area. The claimant replied that it was not his job and he was not going to do it. Davies reminded the claimant of the employer's policy of safety, quality, and production, and as a forklift operator, he needed to take the tire to the holding area. The claimant again said he was not going to it.

Davies left the area and found the union steward. Davies explained the situation to the union steward, and told him if the claimant had not moved the tire as Davies had instructed, Davies was going to walk him out for subordination. About that time, the claimant drove up on his forklift and complained that Davies was picking on him. Davies then called security and the claimant was escorted out.

An investigation was conducted by the employer. After reviewing the situation, the employer terminated the claimant's employment December 5, 2011.

The claimant filed for and received a total of \$2,999.02 in unemployment insurance benefits for the weeks between December 4, 2011, and January 28, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Davies' testimony was consistent and credible. Jeff Higgins' investigation corroborated Davies' testimony. I have difficulty believing Davies would have reacted as he did, if the claimant had told him that he would move the tire after unloading what he had on the forklift. Based on the findings, the claimant committed an act of insubordination and was discharged for work-connected misconduct.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment decision dated December 29, 2011, reference 03, decision is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid

wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css