

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**EMMANUEL SANDY**  
Claimant

**BRIDGESTONE AMERICAS TIRE**  
Employer

**APPEAL NO. 14A-UI-08119-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/29/14**  
**Claimant: Appellant (5)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Emmanuel Sandy (claimant) appealed an unemployment insurance decision dated August 1, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Bridgestone Americas Tire (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 5, 2014. The claimant participated in the hearing. The employer participated through Jim Funcheon, Division Human Resources Manager and Tom Barragan, Human Resources Section Manager. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct or whether he voluntarily left his employment without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time production worker from April 2, 2012, through his last day of work on July 1, 2014. Company policy prohibits the use of cell phones in any production, warehousing or operational area of the plant. The claimant received a written warning on December 8, 2013, for listening to his cell phone with ear buds in the jeep shop while on a fork lift on December 5, 2013. His electronic privileges were suspended for a period of one year, which meant that he could not have any electronic devices on company premises for a period of one year. The claimant was advised that any further violations would result in an unpaid suspension.

The claimant violated the electronic device policy again on January 3, 2014. Adam Swangel saw the claimant talking on his cell phone at approximately 6:50 p.m. Mr. Swangel told Kim Peterson about it when he arrived at 4:45 a.m. on January 4, 2014. Mr. Peterson saw the claimant's cell phone hanging out of pocket and told the claimant to head upstairs. The claimant requested a union steward. The claimant was advised he was in violation of the

electronic device policy and that he would need to contact the human resources department on the following Monday. He was escorted off the property after he retrieved his belongings. The claimant was given a five-day suspension.

On Tuesday, July 1, 2014, Crew Manager Kolayout Mila brought the claimant to the office after he had again violated the electronic device policy. He was seen using his cell phone while working and Mr. Mila asked if he was still on probation but the claimant denied that he was. Mr. Mila was unsure of his status but advised the claimant he would be paid if he was not in his probation status. However, he escorted the claimant off the property and advised him to contact Tom Barragan of Human Resources on the following morning. The plant was going through the summer shutdown from July 2, 2014, through July 10, 2014. However, Mr. Barragan was working on July 2, 2014, and many other days during the shutdown. There was always someone in the human resources offices during the plant shutdown.

The claimant never contacted Mr. Barragan at any time and never spoke with anyone in human resources. He contends that he called Mr. Barragan on July 2, 2014, but said no one answered. The claimant could not offer an explanation as to why he did not leave a message. He admitted he never attempted to speak or spoke with anyone in human resources after that.

The claimant's union representative contacted him on July 10, 2014, and advised him that he needed to go to the human resources department on July 11, 2014, after the shutdown was over. The claimant was out of town and said he could not do that. On July 11, 2014, Mr. Barragan had not heard from the claimant so spoke to his union representative and asked whether the union representative could contact the claimant to set up a meeting on July 14, 2014. The union representative confirmed the July 14, 2014, meeting was okay with the claimant but the claimant never showed.

Mr. Barragan gave the claimant another chance and asked the union representative to set up another appointment on July 16, 2014. The union representative set up the meeting and again the claimant did not arrive for the scheduled meeting. The employer sent him a certified letter dated July 16, 2014, advising him he was considered to have abandoned his job. The claimant admitted he was out of town until July 16, 2014, and that he never tried to contact human resources but did communicate with his union representative.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to contact human resources at any time on or after July 2, 2014, when he knew that was what was required of him. He failed to provide the reason for his actions.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated August 1, 2014, (reference 01), is modified with no effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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