

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS JOHNSON**  
Claimant

**APPEAL NO: 12A-UI-09260-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 07-01-12**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 23, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 27, 2012. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jim Funcheon, Division Human Resources Manager and Tom Barragan, Human Resources Section Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cutter operator for Bridgestone from March 29, 2006 to June 11, 2012. He was discharged for exceeding the allowed number of attendance points. The employer's attendance policy assesses one-half point for an incidence of tardiness or leaving early of less than half of the shift; a full point for arriving after more than half of the shift has passed or leaving before working at least half of the shift, one point for a full day absence; one point for consecutive days absences if the claimant can show the employer he saw his physician within the first three days of reported illness; and is eligible for the employer's accident and sickness policy if he is gone for an extended period of time and provides proof that he saw his physician within three days of the onset of the condition and provides medical documentation to the employer within 30 days. Employees are allowed nine attendance instances within a rolling nine-month period. Each time the employee is absent and receives a disciplinary step, the nine-month rolling period starts over again from that time. The claimant was absent due to illness and received one point June 7, June 15, June 16, June 24 through June 26 (one point), and July 24, 2011, at which time he received a written counseling for accumulating five attendance points, within a rolling nine-month period. He was absent due to

illness August 10, 2011, and received a step one written warning for accumulating six attendance points with a rolling nine-month period. He was absent due to illness August 11, 2011, and received a step two written warning for accumulating seven attendance points with a rolling nine-month period. He was absent March 1, 5, 6, 9 through 11, 14, 15, 19, 20, 23 through 25, 28, 29, April 2, 3 and 6 through 8, 2012, and was issued one point and a step three written warning for accumulating eight attendance points within a rolling nine-month period. His doctor's note stated he had bronchitis, sinusitis, fatigue and acid reflux. Those absences were not accepted for the employer's accident and sickness policy because he did not provide timely medical documentation, thus the one point. The claimant was absent due to illness May 5, 6, 9, 10, 14, 15, 18 through 20, 23, 24, 29, and June 1 through June 3, 2012, and was issued one point and a step four termination document for exceeding the allowed number of attendance points in a rolling nine-month period. His doctor's note stated he had laryngitis, acid reflux, hoarseness and dyspepsia. Those absences were not accepted for the employer's accident and sickness policy because he failed to submit the required paperwork within 30 days of the beginning of his illness. The claimant had been on accident and sickness leave 16 times since 2009 and used it properly on 15 of those occasions. If the claimant had submitted the required medical documentation within 30 days he would not have received a point and his employment would not have been terminated June 11, 2012.

The claimant has not claimed and received unemployment insurance benefits since his separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant exceeded the allowed number of attendance points by accumulating nine points in a rolling

nine-month period. The claimant was absent at least 35 days between March 1, 2012, and June 3, 2012. While his absences were due to reported illness, he failed to provide the required medical documentation within the time prescribed by the employer and agreed upon in the union contract. Consequently, he did not qualify for the employer's accident and sickness policy and received two points for his multiple absences in March, April, May and June 2012. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment, with a union steward present, and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

**DECISION:**

The July 23, 2012, reference 01, decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs