

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARTH FREIMARK
Claimant

APPEAL NO: 08A-UI-02755-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**OC: 02/10/08 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Garth Freimark (claimant) appealed an unemployment insurance decision dated March 10, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Titan Tire Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on April 9, 2008. The claimant participated in the hearing. The employer participated through Joyce Kain, Human Resources Manager and Mike Hoyt, Maintenance Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance technician supervisor from September 20, 2007 through February 12, 2008 when he was discharged for violating a safety policy. As a supervisor, he is responsible for disciplining other employees who violate safety policies. Per company policy and Occupational Safety and Health Administration (OSHA) standards, employees are always required to shut down a piece of moving equipment before working on that equipment, even though this stops production. The employee is then required to lock the equipment with a particular key so that it cannot be turned on and tag the equipment with an identification tag. Violation of this mandatory lock-out/tag-out procedure results in mandatory termination. On February 8, 2008 the claimant needed to work on a piece of equipment. Instead of turning off the belt, he asked a fellow supervisor to block a sensor so he could crawl across the ten foot belt. The sensor was not completely blocked so when the claimant got onto the belt, it started moving and his right arm was pulled between the belt and the rollers causing injury. The belt was subsequently turned off and he was able to pull his arm free but it was swollen with abrasions and needed medical treatment. This was the most serious safety violation the employer had and the claimant was subsequently terminated.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for an intentional violation of a mandatory safety policy on February 8, 2008. As a supervisor, he is held to a higher standard as he is responsible for enforcing safety policies and disciplining employees in violation of those policies. The claimant's refusal to lock-out and tag-out the tire belt before working on it shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated March 10, 2008, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs