

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SATHIENE SAYCHAREUN**  
Claimant

**APPEAL NO: 12A-UI-00281-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE  
OPERATIONS LLC**  
Employer

**OC: 11-27-11  
Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 30, 2011, 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 February 6, 2012. The claimant did not respond to the hearing notice until after the record was closed when he called the Appeals Section personally and stated he expected to be called even though he had not provided his phone number prior to the hearing as directed. He was told the hearing was over and he 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 Jeff Higgins, Labor Relations 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 tire processor for Bridgestone Americas Tire Operations from June 21, 2010 to December 14, 2010. On December 7, 2010, the claimant left the building without permission and went out past security without a pass to leave the plant issued by his supervisor. The claimant walked out on the other side of the guard shack where it was difficult for security to see him as he would not have been allowed to leave without a pass (Employer's Exhibit Three). Someone dropped him off December 8, 2010, and he walked through a controlled gate while the guards were busy with other employees entering the plant (Employer's Exhibit Four). The claimant was called to the office and when asked why he walked off the job the night before told his supervisor "someone in my mind told me to leave" (Employer's Exhibit Three). The employer was not aware the claimant suffered from any mental health issues during the time he worked there. When an employee walks off the job without permission his employment is terminated and consequently the employer discharged the claimant effective December 14, 2010 (Employer's Exhibits One and Two). The claimant had accumulated three

no-call no-show absences and seven unexcused absences during his six months of employment with this employer.

The claimant has 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 § 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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant walked off the job without permission from his supervisor around 2:35 a.m. December 7, 2010, and obviously snuck out past security because he did not have a pass stating he had permission to leave, which indicates he knew what he was doing was a violation of the employer's policy. Walking off the job without permission results in immediate termination of employment. Additionally, the claimant had three previous no-call no-show absences and seven unexcused absences in the six months he was employed. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's

interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 not eligible for those benefits. The matter of determining 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 December 30, 2011, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. 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. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs