

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENT SMITH
Claimant

APPEAL NO. 09A-UI-16656-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**Original Claim: 06/28/09
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Titan Tire Corporation (employer) appealed an unemployment insurance decision dated October 30, 2009, reference 02, which held that Brent Smith (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2009. The claimant participated in the hearing with Attorney Jim Hamilton. The employer participated through Scott Mavin, Benefits Administrator, and Dave Fines, Operations Manager. 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time tire builder from February 13, 2006 through October 12, 2009, when he was discharged per the employer's progressive disciplinary policy. The employer's progressive disciplinary policy is rule specific and violations of different rules are not collated to result in termination. The claimant started employment in the tractor tire room and worked there approximately two years before transferring to the mill room. He received one written warning on May 13, 2009 for being out of his work area over 15 minutes. A written warning was issued to him on June 16, 2009 for absenteeism and a written warning was issued to him on September 2, 2009 for unexcused absenteeism. An employee is allowed to receive five absenteeism warnings before he or she is discharged. The claimant was informally counseled on September 21, 2009 for low production.

The claimant was discharged for repeated violations of Rule 19, which is a rule that addresses quality. Violations of Rule 19 are very serious and an employee first receives a written warning. The next violation is a three-day suspension, and the employee is discharged after that for any further violations. The claimant was working in the mill room (material prep) when he received

his first written warning on December 5, 2009 for filling the dip tank with rubber. He was working on a machine that mixes and produces rubber and the claimant failed to pay attention to the shafting mill, so rubber jammed inside the dip tank. It took three hours to clear out the jam. The claimant had another Rule 19 violation on April 5, 2009, when he failed to pay attention and did not have the soap tank full with solution. His actions caused three skids of rubber without soap, 20 batches, and it took about an hour's worth of run time to correct the problem. Since it was his second Rule 19 violation, he received a three day suspension.

The claimant transferred out of the mill room on July 27, 2009 and went to the strip liner department. He was then bumped to the fabric cord area for one week before moving into a tire builder position. He was cited for another Rule 19 violation on August 25, 2009, when he failed to identify seven tires. Employees in this department are supposed to use a special marker to write on the inside of the tire after it is constructed. There were seven tires that he did not identify with category number or date shift. The employer could have terminated the claimant based on this third violation but opted to give him a second chance and suspended him for an additional three days.

The final incident occurred on October 7, 2009, when the claimant produced scrap product. There were ten tires that had off center cords, which meant that there was not enough ply material wrapped around the metal alloy bead. This resulted from the claimant's negligence of failing to put fabric on the center of the building drum. Additionally, there were three tires that had cocked beads or were not set concentrically so as to fit snugly on the wheel. In addition to the claimant's negligence in making these tires, he also elected not to pull these faulty tires to be rebuilt. The employer testified the claimant would have recognized the tire defects but since he did not pull them, the defects were subsequently found by the employees who worked the next step in the process. The claimant was discharged per the employer's progressive disciplinary policy after four violations of Rule 19.

The claimant filed a claim for unemployment insurance benefits effective October 30, 2009 and has received benefits after the separation from employment.

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 on October 12, 2009 per the employer's progressive disciplinary policy. Typically, only three Rule 19 violations result in termination, but the claimant was given an extra chance and was terminated after four violations. Most of these violations were due to negligence, but the claimant acted intentionally when he failed to pull the defective tires he made on October 7, 2009. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The claimant was repeatedly negligent and his actions were detrimental to the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated October 30, 2009, reference 02, is reversed. 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. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw