

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYXINE L LUND

Claimant

APPEAL NO. 12A-UI-13629-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE

Employer

OC: 10/14/12

Claimant: Respondent (2-R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the November 6, 2012, (reference 01), decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 18, 2012. Claimant participated. Employer participated through division human resources manager, Jim Funcheon, human resources section manager, Tom Barragan, and human resources coordinator, Samantha Peterson. Employer's Exhibit One was received.

ISSUES:

Did the employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits? Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker from June 21, 2010 and was separated from employment on October 13, 2012. Her last day of work was March 11, 2012. She was on Family Medical Leave Act (FMLA) and then on March 19, 2012 was placed on accident and sickness (A&S) leave. She was discharged because of having failed to comply with medical documentation requirements. She complied with the requirements each month through September 25, 2012 and on September 24, 2012 a 14-day letter was sent on that date reminding her of the need to provide the A&S form. Nothing was received so a five-day letter was sent to her on October 8 (October 8, 2012 was the Columbus Day postal holiday, so it would have been postmarked on October 9) and she received it on October 10. It had a due date of October 12, 2012 but she did not submit the medical documentation by that deadline so was discharged. She turned in documentation dated October 12, 2012 on October 15, 2012 after the deadline and termination. She blamed the delay on the October 8 Columbus Day holiday and her desire to submit the documentation in person but the employer was open for business on both October 8 and October 12, 2012. She was aware of the employer's policy requiring medical documentation supporting A&S leave every four weeks. She had an appointment with a new doctor who was Dr. Carrie Milligan on October 16. She last saw her regular physician Dr. Terry Formonick on September 25 but she did not ask for the new A&S documentation, even though she knew the previous A&S coverage documentation expired that day. She had not seen the company doctor yet to be released to return to work and was still under medical care from Dr. Formonick.

Claimant received unemployment benefits after the separation on a claim with an effective date of October 14, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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(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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that claimant failed to provide medical documentation to support her A&S leave after having been reminded to do so on September 24, 2012, and warned on October 9, 2012. Even considering the Columbus Day holiday mailing delay of one day and extending the deadline to October 13, 2012, her submission of medical documentation was not made until October 15, 2012. Since she saw her physician on September 25, 2012, the date her previous medical documentation period expired,

she could have reasonably met the new documentation period deadline by obtaining that information on that day. Benefits are denied.

The administrative law judge further concludes the claimant has been overpaid benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. 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.

DECISION:

The November 6, 2012, (reference 01), decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND:

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/bjc