

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABDELKARIM A MOUSA
Claimant

APPEAL NO. 11A-UI-15467-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE
Employer

OC: 07/17/11
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer, Bridgestone, filed an appeal from a decision dated August 4, 2011, reference 01. The decision allowed benefits to the claimant, Abdelkarim Mousa. After due notice was issued, a hearing was held by telephone conference call on January 4, 2012.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 2:59 p.m. and a voice mail answered clearly identifying it as being the voice mail box of the claimant. The message continued that the voice mail box was full. By the time the record was closed at 3:16 p.m., the claimant had not contacted the Appeals Section and did not participate.

The employer participated by Human Resources Manager Jim Funcheon, Foreman Jim Breon, Night Crew Leader Kolayut Mila, Human Resources Section Manager Tom Barragan, and Unemployment State Consultant Kendra McDonald. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

A disqualification decision was mailed to the employer's last known address of record on August 4, 2011. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 14, 2011. The appeal was not filed until December 2, 2011, which is after the date noticed on the decision.

The decision was mailed to the employer's corporate office, but no one can account for what happened to it. The address of record should have been the TALX address, which had been the employer's representative since 2005. The employer's representative did not know about the decision until it received a third quarter 2011 statement of charges sent November 17, 2011.

Abdelkarim Mousa was employed by Bridgestone from July 12, 2010 until July 1, 2011 as a full-time utility person. On July 1, 2011, Foreman Tim Breon was contacted by supervisor Larry Smith and asked him to come to the work area. Mr. Mousa had been given a work assignment by the supervisor and he refused to do it, stating that it was not his job to do. Mr. Breon and Night Crew Leader Kolayut Mila both attempted to explain to him that it was within his job duties, but he kept saying he had been told by a trainer it was not. The supervisor asked him if he understood this was insubordination and could lead to his discharge and he said he did, but he still refused to do it.

Human Resources Section Manager Tom Barragan interviewed him that night and went over the same things the supervisors had done, explaining that when a supervisor gives him an order it is his obligation to follow it, and that refusal was insubordination, which would lead to discharge. He still refused and was suspended.

The plant was on shut down from July 4 through 10, 2011, and when work resumed the investigation continued by Mr. Barragan talking with the supervisors. The claimant was called back to the plant on July 15, 2011, and told he was discharged.

Abdelkarim Mousa has received unemployment benefits since filing a claim with an effective date of July 17, 2011.

REASONING AND CONCLUSIONS OF

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The decision was not mailed to the employer's designated representative, although it was mailed to the corporate office. There is no testimony about what happened to the decision when it arrived at the corporate office but it is evident nothing was done until the third quarter 2011 statement of charges was mailed to TALX. As there is no substantial proof as to the actual date of receipt of the earlier mailings, the appeal shall be accepted as timely.

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 claimant was discharged for insubordination. He was given a reasonable order to perform a job that was within his job description and refused. His assertion that he had been told by a trainer it was not his job was explained as being untrue by the employer, but he still refused even after being told it could result in discharge.

A willful failure to follow reasonable instructions by a supervisor is conduct not in the best interests of the employer and constitutes misconduct. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision dated August 4, 2011, reference 01, is reversed. The appeal shall be accepted as timely. Abdelkarim Mousa is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw