

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICARDO RAMIREZ
Claimant

APPEAL NO: 12A-UI-08027-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 06/10/12
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Bridgestone Americas Tire (employer) appealed an unemployment insurance decision dated June 29, 2012, reference 01, which held that Ricardo Ramirez (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 July 30, 2012. The claimant participated in the hearing with Dan Hupp, former co-employee. Margarita Pizano Interpreted on behalf of the claimant. The employer participated through Jim Funcheon, Division of Human Resources Manager; Jeff Higgins, Labor Relations Manager; Adam Gass, Security Officer. 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 general laborer from May 16, 1988 through June 12, 2012 when he was discharged for violation of company policy. The employer has zero tolerance for violation of its policy prohibiting employees from placing their hands on any other individual. Violation of this policy is considered gross misconduct and warrants immediate termination. This is a commonly known policy but employees are also informed of it at the time of hire.

At the end of their shifts, employees leave the plant through a revolving gate turnstile. On June 5, 2012, there was a malfunction with a turnstile and the employees were being redirected to the guard house at the front main gate. At the end of the claimant's shift after 6:00 p.m., he approached the guard house and three employees were standing in line waiting to speak to Security Officer Adam Gass so they could leave. The claimant proceeded forward in front of the other employees and said he wanted to go home. Officer Gass told him to get back in line and

extended his arm out to block the claimant's path. The claimant said, "Don't try to stop me, I need to get home." He pushed him or pushed his arm out of the way and exited the guard shack.

The employer received an incident report about it on June 6, 2012 but the claimant was not scheduled to work that day or the next. He was suspended after returning to work on June 8, 2012. The employer's investigation confirmed the claimant did place his hands on Officer Gass so that he could immediately leave instead of getting in line behind the other employees, as he was directed to do. The claimant was subsequently discharged on June 12, 2012 in accordance with the union contract.

The claimant filed a claim for unemployment insurance benefits effective June 10, 2012 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 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 employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 12, 2012 for an assault on Officer Gass on June 5, 2012. The employer has zero tolerance for violation of the policy prohibiting employees from touching other employees. The claimant felt that his needs were more important than the other employees who were also waiting to leave and he violated the employer's policy to take care of those needs. The claimant's conduct 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.

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 June 29, 2012, reference 01, 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/pjs