

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**VU T NGUYEN  
1422 E 17<sup>TH</sup> ST  
DES MOINES IA 50326**

**TITAN TIRE CORPORATION  
2345 E MARKET ST  
DES MOINES IA 50317**

**MARTIN OZGA  
ATTORNEY AT LAW  
6611 UNIVERSITY AVE #200  
DES MOINES IA 50311-1165**

**Appeal Number: 05A-UI-02062-CT  
OC: 01/16/05 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Vu Nguyen filed an appeal from a representative's decision dated February 17, 2005, reference 01, which denied benefits based on his separation from Titan Tire Corporation (Titan). After due notice was issued, a hearing was held by telephone on March 21, 2005. Mr. Nguyen participated personally and was represented by Martin Ozga, Attorney at Law. Exhibit A was admitted on his behalf. Wenn Pham participated as the interpreter. The employer did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Nguyen was employed by Titan from June 18, 1999 until January 20, 2005 as a full-time tire builder. He was discharged from the employment because of his attendance. Prior to Sunday, January 16, Mr. Nguyen was asked by a supervisor other than his own whether he wanted to volunteer to work on January 16. He indicated his willingness to work that date. It is the employer's usual practice to write an individual's name on the work schedule if they have volunteered to work. When he left work on January 14, his name was not on the schedule for January 16. Therefore, Mr. Nguyen did not report for work or contact the employer on that date as he believed he was not needed.

Mr. Nguyen worked his normal schedule on January 17, 18, and 19. When he reported to work on January 20, he was notified of his discharge. Prior to January 16, Mr. Nguyen had been late reporting to work on three occasions, each of which was considered by the employer to be an unexcused absence. The last occasion was October 14, 2004. He was discharged pursuant to a company rule, which provides for termination if an individual has five unexcused absences within a one-year period. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Nguyen was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was due to a current act of misconduct. See 871 IAC 24.32(8). Although Mr. Nguyen was not at work on January 16, he had a good-faith belief that he was not needed that day. He had volunteered to work on January 16 and expected his name to be written on the schedule if he was, in fact, needed that day. Because Mr. Nguyen's failure to be at work on January 16 was based on a good-faith belief that he was not required to work, his absence did not constitute an act of misconduct.

The next most prior attendance infraction on Mr. Nguyen's record was in October of 2004. An absence that occurred in October would not be a current act in relation to the January 20 discharge date. After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish a current act of misconduct. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated February 17, 2005, reference 01, is hereby reversed. Mr. Nguyen was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/sc