

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH E KLEINMEYER**  
Claimant

**APPEAL NO. 11A-UI-01963-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE RETAIL OPERATIONS LLC**  
Employer

**OC: 01/09/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(9) – Suspension/Disciplinary Layoff

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated February 8, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits, finding the claimant was dismissed from work on January 13, 2011, but finding the employer did not show misconduct sufficient to warrant the denial of benefits. After due notice was issued, a telephone hearing was held on March 17, 2011. The claimant participated personally. The employer participated by Mr. Brandon Dunning, service manager.

**ISSUE:**

At issue is whether the claimant's suspension or disciplinary layoff took place under disqualifying conditions.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Joseph Kleinmeyer was employed by Bridgestone Retail Operations from December 28, 2009, until January 13, 2011, when he was suspended on a disciplinary layoff for approximately one and one-half weeks while the employer investigated allegations of misconduct. After the one and one-half week period, Mr. Kleinmeyer was reinstated by the employer and paid backwages. Mr. Kleinmeyer had filed an unemployment insurance claim after being initially suspended without pay. The claimant has not filed a claim for weekly benefits.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

In this matter, the claimant was suspended or given a disciplinary layoff by the employer for the purpose of investigating allegations of misconduct on the part of Mr. Kleinmeyer. After being off work for approximately one and one-half weeks, the employer determined that Mr. Kleinmeyer had not engaged in disqualifying misconduct and the claimant was reinstated with backpay for the period of time that he was off work.

The question before the administrative law judge is whether the Agency correctly determined that the claimant's disciplinary layoff should be categorized as a discharge and whether, under the circumstances of the case, the suspension or disciplinary layoff took place under disqualifying conditions. The evidence in the record establishes the claimant did not engage in disqualifying misconduct. Although Mr. Kleinmeyer filed a claim for benefits and was determined to be potentially eligible, the claimant did not file a weekly claim to obtain weekly

benefits, as he had been reinstated and been paid backwages by the employer. The Agency determination that the claimant had not engaged in disqualifying misconduct is affirmed.

**DECISION:**

The representative's decision dated February 8, 2011, reference 01, is affirmed. The claimant's suspension or disciplinary layoff was correctly categorized as a discharge under non-disqualifying conditions.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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