

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KYLE D RICE**  
Claimant

**BRIDGESTONE AMERICAS TIRE**  
Employer

**APPEAL 15A-UI-08692-DGT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/21/15**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct – Disciplinary Suspension

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 23, 2015, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 25, 2015. Claimant participated personally. Employer participated by Jim Funcheon, Division Human Resources Manager. Employer's Exhibits 1 through 3 were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer suspended claimant on June 19, 2015, because a tire he may have inspected was reported to be unsatisfactory by a customer.

Under employer's policy number 49 if an item comes back from a dissatisfied customer that is grounds for immediate termination. The employer did not see the actual tire that was rejected by the customer, but they did see photos of what appeared to be a defect. Employer investigated the matter and believed it was likely that claimant was the person who inspected the tire, and that he missed a major defect.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating [suspending] claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination [suspension] of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge [suspension] is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

Inasmuch as employer has not met the burden of proof to establish that claimant acted deliberately or intentionally in violation of company policy, procedure, or prior warning, the reasons for the suspension are not disqualifying and benefits are allowed.

**DECISION:**

The July 23, 2015, reference 01, decision is affirmed. Claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs