IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AHMAT A ISSA
Claimant

TITAN TIRE CORPORATION
Employer

APPEAL NO. 10A-UI-05804-S2T

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 06/28/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ahmat Issa (claimant) appealed a representative's April 13, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Titan Tire Corporation (employer) for failure to perform satisfactory work of which he was capable. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 10, 2010. The claimant participated personally. The employer participated by Deborah Sgambati, Human Resource Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 4, 2004, as a full-time press operator. The claimant signed for receipt of the employer's handbook on June 4, 2004. The claimant worked without any complaints against him for four years. The claimant had a problem with his supervisor and asked the employer to move him to a different area. The employer moved the claimant away but later moved him back. After he moved back, the employer began to issue the claimant warnings for poor performance.

The employer issued the claimant written warnings on February 9 and September 24, 2009, for performance issues. The employer said that the last tire the claimant produced at the end of his shift was imperfect. The claimant investigated and found the tire was created after he left work. On November 23, 2009, the employer issued the claimant a written warning and three-day suspension for performance issues when the machine was at fault.

On February 24 and March 11, 2010, the employer said the last tire the claimant produced at the end of his shift was imperfect. The claimant told the employer that he did not create those tires. The employer terminated the claimant on March 15, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose to provide a witness without firsthand knowledge of the final incidents. Questions about the specifics of the faulty tires, who inspected them, what the inspector saw, and how that result could have been created, did not appear to be within the employer's witness's knowledge. The employer did not provide firsthand testimony at the hearing and, therefore, did not provide sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 13, 2010 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw