

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NGHIEP H NHAN
Claimant

APPEAL NO. 09A-UI-16397-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

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

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

Nghiep H. Nhan filed a timely appeal from an unemployment insurance decision dated October 27, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held February 2, 2010, with Mr. Nhan participating and being represented by Charles Hill, attorney at law. Lan Nguyen served as the interpreter. The employer, Titan Tire Corporation, provided the names of two witnesses and a telephone number. The telephone number was answered by a recording at the time of the hearing. The administrative law judge left instructions for the employer to contact the Appeals Bureau if it wished to participate. There was no further contact prior to the preparation of this decision. Claimant Exhibit A was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Nghiep H. Nhan was employed by Titan Tire Corporation from September 1998 until he was discharged on September 28, 2009. He last worked as a tire maker. Mr. Nhan does not speak English well. His native language is a blend of Vietnamese and Cantonese. Oral communications at work were difficult. He was discharged because of three errors in his workmanship that were not deliberate. He received no discipline for attendance or any other infractions during his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the contested case hearing. The claimant's testimony and documentary evidence is not contradicted. That evidence does not establish willful or careless misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated October 27, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw