

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY W VAN NOTE
Claimant

APPEAL NO. 16A-UI-09017-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE RETAIL OPERATIONS LLC
Employer

OC: 07/24/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelly Van Note (claimant) appealed a representative's August 12, 2016, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Bridgestone Retail Operations (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 7, 2016. The claimant participated personally. The employer participated by Ben Moiterno, Area Manager, and Tom Spencer, Store Manager. The employer offered and Exhibit One was received into evidence.

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 considered all of the evidence in the record, finds that: The claimant was hired on July 30, 2014, as a full-time sales associate. The claimant signed for receipt of the employer's handbook on July 10, 2014. The claimant was diagnosed with lymphedema, a condition that caused his leg to swell. His doctor restricted him to sitting on a stool at work for 30 minutes at a time. The employer did not accommodate his restrictions. The store manager imitated the claimant walking with a limp. In January and February 2016, the claimant called the employer's hotline number to complain. He left a message but no one returned his calls.

On November 20, 2015, the store manager issued the claimant a Notice and Guide for Performance Improvement for not locking the building's exterior doors. The claimant thought he had locked the doors. The store manager told the claimant not to let it happen again. On July 22, 2016, the store manager issued the claimant a Notice and Guide for Performance Improvement for not locking the building's exterior doors. Again, the claimant thought he had locked the doors. The store manager told the claimant that it was probably not a problem. On July 29, 2016, the employer terminated the claimant for failure to lock the doors.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 12, 2016, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs