

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON J KOENINGSDORF
Claimant

APPEAL NO. 13A-UI-10989-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 08/11/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated September 17, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 22, 2013. The claimant participated. The employer participated by Mr. Tom Barrigan, Human Resource Section Manager and Ms. Samantha Peterson, Human Resource Coordinator.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Brandon Koeningsdorf was employed by Bridgestone Americas Tire from October 11, 2010 until August 27, 2013 when he was discharged for violating the company's attendance policy. Mr. Koeningsdorf was employed as a full-time production worker and was paid by the hour.

Under the terms of the company's attendance policy employees are subject to discharge if they accumulate nine attendance infraction points in a nine-month rolling period. Employees are advised by the company when they have accumulated various levels of infraction points and are put on notice that their employment is in jeopardy for excessive absenteeism.

The claimant had been absent on June 23, 2012 due to illness. The claimant was absent on November 10, 2012 because of a medical emergency concerning his parents. The claimant was absent on January 6, 2013 when he was required to take his wife to the hospital. The claimant was absent on January 14 and 15, 2013 due to illness and absent on February 25 and 26, 2013 due to illness. Mr. Koeningsdorf was absent on June 27, 2013 for a portion of a day and had to leave early to take his wife to the hospital. The claimant was absent for part of the day on July 30, 2013 and was required to take his son to the hospital. The final attendance infraction that caused the claimant's discharge took place on August 7, 2013 when the claimant was called off work due to injury after cutting his hand in a non-work-related incident.

The claimant had been absent on September 5, 2012 and November 19 and 28, 2012 for personal reasons. In all instances the claimant had called in to properly report his impending absence.

It is the employer's position that the claimant's attendance infractions were excessive under company policies and that the claimant did not take sufficient action to have a number of absences excused, by completing Family Medical Leave paperwork in advance of the absences.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be

considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). The focus is on deliberate, intentional or culpable actions by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36 (Iowa 1992).

In determining whether an individual has engaged in disqualifying misconduct in connection with his or her employment, state law is the criteria to be used to determine whether disqualifying misconduct has taken place, not specific employer attendance policies.

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

In the case at hand the evidence establishes that the majority of the claimant's absences were due to illness and that all absences were properly reported by the claimant. The final absence that caused the claimant's discharge took place when Mr. Koeningsdorf was hospitalized and unable to report to work. Proper notice was provided to the employer. Under these circumstances, the claimant has not engaged in misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 17, 2013, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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