

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENDALL HOWELL
Claimant

APPEAL NO: 16A-UI-05024-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 04/10/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 29, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 13, 2016. The claimant participated in the hearing. Jim Funcheon, Divisional Human Resources Manager; Tom Barragan, Human Resources Section Manager; and Mary Prescott, Foreman of Waste Department; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Bridgestone Americas Tire from October 29, 2012 to April 15, 2016. He was discharged for violating the employer's attendance policy.

The claimant worked from 2:00 p.m. to 10:00 p.m. The employer's attendance policy states that employees must call prior to their scheduled shift if they are going to be absent. If an employee is using accident and sickness leave, he must call in everyday until he received the paperwork from the employer stating his leave is approved. If an employee fails to call in prior to the scheduled start time of his shift progressive disciplinary action occurs. The first incident results in a first step letter of discipline; the second incident results in a letter of reprimanded; the third incident results in a final letter of reprimand; and the fourth incident results in termination.

On August 12, 2014, the claimant received a letter of discipline for failing to call to report his absence before his shift August 3, 2014. On December 1, 2014, he received a letter of reprimand for failing to call to report his absence before his shift November 22, 2014. On February 23, 2015, he received a final letter of reprimand for failing to call and report his absence before his shift February 15, 2015. On September 22, 2015, he failed to call and report his absence before his shift. On October 5, 2015, the employer issued the claimant a condition of employment letter stating if he had another violation in the next year his employment would be terminated.

The claimant was ill from February 28 through April 11, 2016. He was waiting for his Accident and Sickness leave to come through. He called in to report his absences February 28 through March 1, 2016. He forgot to call in March 2, 2016. In addition to his own illness the claimant was helping his mom who was suffering from cancer and going through treatment. He did not take his accident and sickness leave paperwork into the employer until March 8, 2016.

The claimant returned to work April 11, 2016. The employer terminated the claimant's employment April 15, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged 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(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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was in the middle of an extended absence. He was also dealing with an unfortunate and stressful situation involving his mother. Although he should have called to report his absence March 2, 2016 and he violated the condition of employment letter, he had not failed to call in prior to his shift for the six months prior to March 2, 2016. Two incidents in the last year, September 22, 2015, and March 2, 2016, is not excessive within the meaning of the law. Therefore, benefits must be allowed.

DECISION:

The April 29, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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