

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM H BUCK**  
Claimant

**APPEAL NO. 11A-EUCU-00848-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE**  
Employer

**OC: 02/27/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer, Bridgestone, filed an appeal from a decision dated March 28, 2011, reference 01. The decision allowed benefits to the claimant, William Buck. After due notice was issued, a hearing was held by telephone conference call on January 3, 2012. The claimant participated on his own behalf. The employer participated by Human Resources Manager Jim Funcheon, Labor Relations Manager Jeff Higgins, Area Foreman Chuck Holder, and Unemployment State Consultant Kendra McDonald. Exhibit D-1 was admitted into the record.

**ISSUE:**

The issue is whether the appeal is timely and whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

A disqualification decision was mailed to the employer's last known address of record on March 28, 2011. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 7, 2011. The appeal was not filed until December 2, 2011, which is after the date noticed on the decision. The decision was mailed to the employer's corporate office, but no one can account for what happened to it. The address of record should have been the TALX address, which had been the employer's representative since 2005. The employer's representative did not know about the decision until it received a third quarter 2011 statement of charges, although the employer did not account for the first and second quarter 2011 statements of charges, which it would have been sent by Iowa Workforce Development.

William Buck was employed by Bridgestone from March 10, 2004 until February 28, 2011 as a full-time production worker. He was paid on a "piece work" basis. On January 28, 2011, Supervisor Lydia Smith reported to Area Foreman Chuck Holder that the claimant's time records did not coincide with information on the computer. A new computer system was being put into place where the production workers click on the computer screen if they are in "green" or "work" status or "red" and "non work" status. The information was also being kept on a handwritten time sheet during the transition period.

There were discrepancies between what the computer showed and what the handwritten time sheets showed as far as "green" and "red" status. At the end of the shift the handwritten time sheets showed Mr. Buck and his partner were "down" 7.5 hours and produced five tires in the remaining 3.5 hours. The claimant acknowledged he simply put down on his time sheet what his partner did because the partner was the one entering information into the computer and keeping track of the times.

On February 24, 2011, the employer met with the claimant and two union representatives to review the information gathered over the past four weeks. Mr. Buck gave the same explanation, that he had relied on his partner's time records, since he was the one entering the information into the computer. He was discharged on February 28, 2011, for falsification of time records and theft of wages. There was a dispute as to whether five of these tires could be produced in 3.5 hours, with the claimant maintaining it was possible with those particular tires.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The decision was not mailed to the employer's designated representative, although it was mailed to the corporate office. There is no testimony about what happened to the decision when it arrived at the corporate office, but it is evident nothing was done until the third quarter 2011 statement of charges was mailed to TALX. As there is no substantial proof as to the actual date of receipt of the earlier mailings, the appeal shall be accepted as timely.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer's own witnesses acknowledged the computer system was new and that, in part, is what caused the delay in investigating the matter. If the employer found it difficult to deal effectively with its own computer system, that lends credence to the claimant's assertion that the time records were inaccurate from his partner for the same reason.

The employer failed to adequately rebut the claimant's assertion that five of these particular tires could be built in 3.5 hours. It also did not provide adequate explanation for a four-week gap between the date of the incident and the date of discharge. The claimant was not notified of the investigation in a reasonable amount of time, which therefore puts the date of the offense beyond a "current" act as required by the above Administrative Code section. Disqualification may not be imposed.

#### **DECISION:**

The decision of the representative dated March 28, 2011, reference 01, is affirmed. The appeal in this case shall be accepted as timely. The initial decision of the representative remains in effect. The claimant is qualified for unemployment benefits.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw