

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN S TESSNER**  
Claimant

**APPEAL 15A-UI-09547-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 08/02/15  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 19, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was discharged for work-related dishonesty. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2015. Claimant John Tessner participated on his own behalf. Employer Bridgestone Americas Tire participated through Labor Relations Section Manager Jeff Higgins and Area Business Manager of the Tire Room Chad Dowling. Employer's Exhibits 1 through 5 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a Production Worker beginning December 16, 1994, and was separated from employment on July 31, 2015, when he was discharged for violating the employer's falsification policy. (Employer's Exhibit 3). The employer's falsification policy states if an employee is found to have falsified company documents then he or she will be subject to discharge. (Employer's Exhibit 1).

On July 22, 2015 at 3:52 a.m., the claimant was found sleeping on the job by the employer's security guard. The security guard notified the claimant's supervisor who woke him up and yelled at him. At 4:08 a.m., the employer received an emergency phone call from a person who identified himself as the claimant's neighbor stating there had been a water main break at the claimant's home. (Employer's Exhibit 4). The claimant left work at 4:18 a.m. due to the emergency phone call. (Employer's Exhibit 5).

Given the suspicious timing of events that morning, the Area Business Manager of the Tire Room Chad Dowling requested the log kept at the security guard shack regarding the emergency phone call. (Employer's Exhibit 4). The security guards automatically record the

phone number on the caller id from the incoming phone call. The phone number recorded from the claimant's alleged neighbor was identified as the claimant's work partner who was working the same morning as the claimant. Dowling reported this information to Labor Relations Section Manager Jeff Higgins.

Higgins and Dowling met with the claimant, who did not deny the events of that morning. Rather, the claimant explained he was anxious because his supervisor had yelled at him. He also explained that his work partner had previously done this for another employee which led the claimant to believe this was an acceptable practice.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806

(Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp’t Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

The claimant left work under known false pretenses as he knew the emergency phone call was fabricated. The claimant’s conduct was a deliberate violation or disregard for the standard of behavior that the employer had a right to expect. The employer can expect its employees to work their scheduled shift and it also has a right to expect its employees to be honest. Even if the claimant was anxious due to the situation with his supervisor, that does not excuse using false pretenses to leave the facility. The dishonesty is misconduct even without prior warning.

**DECISION:**

The August 19, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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