

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABDALLA, MOHAMED AHMED, A
Claimant

APPEAL NO. 12A-UI-14864-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 11/04/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 7, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 24, 2013. Claimant participated. Participating as a witness for the claimant was Benjamin Tarelech, Tire Inspector. The employer participated by Mr. Jim Funcheron, Division Human Resource Director and Tom Berganer, Human Resource Assistant.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Ahmed Mohamed Abdalla was employed by Bridgestone Americas Tire from November 8, 2010 until October 31, 2012 when he was discharged from employment. Mr. Abdalla was employed as a full-time production worker and assigned to work as a tire inspector. The claimant was paid by the hour. His immediate supervisor was Tim Tinge.

Mr. Abdalla was discharged for violating the company's strict rule that prohibited fighting or threatening behavior by company employees.

On October 31, 2012 the claimant and another worker were engaged in a heated argument in the company's break room area. Company video surveillance tape shows that Mr. Abdalla temporally left the verbal confrontation but returned and upon doing so bit the finger of the other worker who had pointed a finger at Mr. Abdalla upon his return. Based upon the argumentative conduct between the parties and the physical act on the part of Mr. Abdalla, both the claimant and the other worker were discharged from employment.

The bite wound on the other worker's finger required medical treatment and caused the company to investigate the matter. In its investigation approximately seven employees were

questioned and both employer witnesses as well as other management individuals reviewed the security tapes and specifically concluded that the claimant had an opportunity to retreat but did not do so and that the claimant was the aggressor in causing the bite to the other individual when the other individual pointed his finger at Mr. Abdalla.

Because the company's policy prohibiting violence or the threat of violence in the workplace is strictly enforced, employees are subject to discharge on the first offense and therefore Mr. Abdalla was terminated from his employment.

It is the claimant's position that the other worker placed his finger into Mr. Abdalla's mouth and that the claimant responded by biting the other worker's finger.

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.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The testimony in this case is disputed. The administrative law judge having considered the matter at length concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge from employment on October 31, 2012 took place under disqualifying conditions.

The preponderance of the evidence in the record establishes that Mr. Abdalla was aware of the company policy which prohibited fighting or threatening behavior in the workplace and that the claimant had the opportunity to retreat from a verbal altercation with another employee in the company break room on October 31, 2012. The preponderance of the evidence also establishes that Mr. Abdalla reached forward and bit the other employee on the end of the other employee's finger when the other employee pointed a finger at Mr. Abdalla when the verbal altercation between the parties had resumed as Mr. Abdalla again approached the other worker. Because Mr. Abdalla had the opportunity to retreat from the altercation but did not do so, the administrative law judge concludes that the claimant's conduct in continuing the dispute between the parties and misconduct of biting the other employee on the finger constituted misconduct in connection with the work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated December 7, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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