IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JASON A PALMER
Claimant

BRIDGESTONE AMERICAS TIRE
Employer

APPEAL NO: 12A-UI-05024-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/01/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 20, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because his employment separation was for non-disqualifying reasons. The claimant participated in the hearing. Jim Funcheon, Tom Barrigan, Samantha Peterson, and Pete Goshorn appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2010. He worked as a full-time production employee. The employer's policy informs employees that if an employee does not call or report to work for seven days, the employer considers the employee to have voluntarily quit.

The claimant was involved in an automobile accident in October 2011. The claimant provided the necessary documentation and followed the procedures when he was restricted from working as a result of the injuries he received from this accident.

The claimant worked the overnight shift. On February 22, the claimant hurt his elbow and experienced pain. The claimant went to the employer's nurse, who placed him on light-duty work and told him to see the company doctor in the morning. She believed the claimant had chipped the bone at the tip of his elbow. The claimant saw the company doctor the morning of February 23. The company doctor did not change the nurse's light-duty work restrictions. The company doctor told the claimant the employer would make an appointment with a specialist for him.

After the claimant left, Goshorn, the medical department manager, talked to the company doctor. Goshorn questioned when the claimant hurt his elbow, because he did not have any observable bruises. Based on Goshorn's and the doctor's understanding about the day the claimant hurt his elbow, Goshorn and the company doctor concluded the claimant's injury was not work-related.

The claimant reported to work as scheduled for his February 23-24 shift. After the claimant indicated his elbow still hurt, he was told he could not stay and work. The employer told him to go home. The nurse advised the claimant to contact the human resource department to find out what he next needed to do. Even though his elbow hurt, the claimant could have and would have stayed and worked.

The claimant contacted his union representative and also left messages for J.H., a human resource employee. The human resource employee did not respond to the claimant's messages. When the claimant left work on February 23, he did not understand the employer did not consider his injury a work-related injury. The claimant still believed the employer would set up an appointment with a specialist for him and that he was on a leave of absence. When the human resource employee did not return the claimant's calls, the claimant talked to the company nurse a week later. He then learned that his injury was not considered a work-related injury. The claimant then understood he needed to see his personal physician to get a release to return to work. By this time, the claimant's elbow did not hurt and was no longer swollen. The claimant again talked to a union representative, who indicated the claimant should not have to see his personal physician to return to work when the employer sent him home on February 23.

The claimant waited for someone in the human resource department to contact him and/or for the union to talk to the employer so the claimant could return to work. On March 13, the claimant's department manager informed Barrigan that the claimant had not reported to work or called for seven scheduled shifts. The employer sent the claimant a March 14 letter informing him that, as of that date, he was no longer considered an employee because he had not called or reported to work for seven scheduled shifts. The claimant did not contact the employer after receiving the March 14 letter, but again contacted a union representative in an attempt to keep his job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency,

unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for justifiable reasons after learning he had not called or reported to work for seven scheduled shifts. Initially, after the employer sent him home on February 23, the claimant understood he was on a leave of absence and the employer would make an appointment with a specialist for him. It was not until a week later that the claimant understood it was his responsibility to contact the employer's human resource representative and go to his personal physician to obtain a work release before he could go back to work. Unfortunately, a human resource representative did not respond to the messages the claimant left for him. The claimant also contacted his union. The union representative told him the union would work with the employer to get the claimant back to work. A union representative also expressed an opinion that since the employer sent the claimant home on February 23, the claimant should not be required to pay a doctor to get a work release. As a result of changing the claimant's injury from a work-related injury to an off-duty injury and then on-going communications issues, the claimant did not report to work after the employer sent him home on February 23. The evidence does not establish that the claimant intentionally failed to work as scheduled. Instead, he did not receive follow-up calls from a human resource representative and tried to work through his union to return to work. The claimant did not commit work-connected misconduct. Therefore, as of April 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's April 20, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of April 1, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw