

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENNETH BILLS
Claimant

APPEAL NO. 14A-UI-02334-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

OC: 01/26/14
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Bridgestone Americas Tire (claimant) appealed an unemployment insurance decision dated February 18, 2014, (reference 01), which held that Kenneth Bills (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2014. The claimant participated in the hearing. The employer participated through Jim Funcheon, Division Human Resources Manager; Jeff Higgins, Labor Relations Section Manager; and Jared Loftland, Area Business Manager. Employer's Exhibit One was admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant most recently worked as a full-time production worker and was employed from February 5, 1986, through January 30, 2014, when he was discharged for insubordination and falsification. He was skilled in his job duties and performed as the training representative for the new department employees from approximately 2010 through 2012. The claimant received Memos to his file for Failure to Follow Directives on April 18, 2012, and March 4, 2013. These warnings were issued for his failure to scan the right side of the tires. A Letter of Discussion was issued on March 7, 2013, for scanning the tire on the wrong side and a Letter of Reprimand was issued on May 1, 2013 for taking down the presses without notifying anyone.

The employer's equipment provides electronic chronological reports showing every action that is taken. The claimant is a tire layer and a tire layer puts the uncured tire into a steam press. The employer used a pager system that tells the employee which tire to put into which press and which one to take out at specific times. The presses were set up to operate independently in a

staggered production. In August 2013, the employer was experiencing problems because employees were failing to follow the automatic system and were taking control of the presses for their own personal benefit, so they could take longer breaks and perform less steps in their job duties. The chronological reports showed the claimant was one of the main employees who was doing this. He set up the presses to open and close consecutively which led to quality issues with curing and created more stress on the steam system. He was “slug laying” and had some of the presses dry cycling so they ran without a tire in the press.

The employer tried to counteract this by installing an interlock program on the pager system. This would force employees to go to a specific press and would not give them the option to go to any other press. The employer completed training with all 72 tire layers and explained the problems for which the interlock program was installed. In November 2013, Jared Lofland walked by the production area and saw the claimant had four or five presses open at the same time. Mr. Lofland stopped and questioned the claimant as to what he was doing and again went over the training on the interlock program. The claimant acknowledged that he understood and he said he would not do it again. A written warning was not issued because the claimant was one of the top tire layers in the company and clearly understood the issues. Mr. Lofland testified that he warned the claimant if it happened again, he would be terminated but the claimant testified he did not understand how serious it was since he did not receive a written warning.

On approximately January 20, 2014, it was observed the claimant was again refusing to allow the automatic system and was manually interfering with production. He was suspended per the union contract on that day pending further investigation. The claimant admitted to the employer at the time of termination that he had been violating company policy. He was discharged on January 30, 2014.

The claimant filed a claim for unemployment insurance benefits effective January 26, 2014, and has received benefits after the separation from employment in the amount of \$3,264.00. The employer representative sent in detailed written documentation addressing the reasons for the claimant's discharge. Labor Relations Section Manager Jeff Higgins waited for the fact-finding call but one was never received.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on January 30, 2014 for insubordination and a repeated failure to follow directives. He had been warned multiple times about failing to follow directives but continued disregarding those directives and standard operating procedures. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's insubordination was detrimental to the quality of the tires and the employer's equipment. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the claimant received \$3,264.00 in unemployment benefits. Those benefits were not received due to fraud or willful misrepresentation. The employer representative submitted detailed written documentation containing factual information regarding the reasons for the discharge. A first hand witness was available and waiting to take the call from the fact-finder but no call was ever received. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$3,264.00.

DECISION:

The unemployment insurance decision dated February 18, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,264.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css