

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M JOK
Claimant

APPEAL NO. 11A-UI-14278-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE AMERICAS TIRE
OPERATIONS LLC**
Employer

**OC: 10/02/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 1, 2011, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 29, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Jim Funchon participated in the hearing on behalf of the employer with a witness, Jeff Higgins. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a tire processor from October 25, 2010, to February 4, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant knew that employees are subject to discharge if they accumulate three attendance incidents during the first 90 days of employment.

The claimant was late due to a flat tire on November 4, 2010. He was absent without proper notice to the employer for unknown reasons on November 10. He was late for work on November 14.

On January 17, 2011, the claimant did not report to work due to problems with his car's tires and brakes. He did not call in properly to the employer's attendance line.

In early February 2011, the labor relations section leader discovered that in addition to some performance issues, the claimant had accumulated a total of three incidents of absenteeism, which warranted discharge. He met with his supervisors on February 4 and was given an opportunity to provide information about his attendance. He was placed on suspension on February 4 to decide what discipline to impose.

On February 8, 2011, the employer discharged the claimant for violation of the attendance rules applicable to probationary employees.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The evidence establishes the claimant was excessively absent and without proper notice to the employer. The claimant said he contacted the union about his absence on January 17, but that clearly was not the proper procedure. The claimant had problems with his car before and should have made sure he was prepared to get to work. Finally, I believe the employer had reasonable grounds for the 18-day delay in discharging the claimant from January 18 to February 4, 2011.

DECISION:

The unemployment insurance decision dated November 1, 2011, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css