

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHENG Z MORK
Claimant

APPEAL NO. 11A-UI-07993-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE AMERICAS TIRE
OPERATIONS LLC**
Employer

**OC: 05/15/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Pheng Mork, filed an appeal from a decision dated June 8, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 13, 2011. The claimant participated on his own behalf. The employer, Bridgestone, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Pheng Mork was employed by Bridgestone from March 14, 1988 until May 13, 2011 as a full-time production worker. He was selected for a random drug test and gave a urine sample in the company nurse's office on May 6, 2011. He was notified on Sunday, May 8, 2011, he should not return to work but to meet with Tom in human resources on May 13, 2011.

The claimant had tested positive for marijuana and admitted this to Tom at the meeting. He was subsequently fired. He did receive a certified letter notifying him he had the right to have the split sample retested at a laboratory of his choice and telling him what the test would cost. Mr. Mork consulted with his union representative, whom he also informed of the fact he had smoked marijuana, and was told he did not have to have the sample retested, and he elected not to do so.

REASONING AND CONCLUSIONS OF LAW:

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 claimant admitted to smoking marijuana to the human resources representative prior to being fired. He admitted it as well to his union representative and the administrative law judge. The employer did properly notify him by certified mail of his right to have the sample retested but elected not to do so. Mr. Mork maintained he used marijuana for medical reasons upon the recommendation of co-workers, not a doctor.

The claimant violated a know company policy by being under the influence of a controlled substance while at work. His admission of using a controlled substance is sufficient to establish misconduct and he is disqualified.

DECISION:

The representative's decision of June 8, 2011, reference 01, is affirmed. Pheng Mork is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css