

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SOLOMON D LUAK**

Claimant

**APPEAL NO. 14A-UI-04931-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**

Employer

**OC: 06/30/14**

**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 7, 2014, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 2, 2014. Claimant participated personally and with Attorney Jessica Taylor. Employer participated by Tom Barragan. Employer's Exhibits 1-3 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 19, 2014. Employer discharged claimant on March 5, 2014 because employer determined that employee was insubordinate in not taking a requested test. Claimant had not signed off on a book throughout his day's work as a booker. As there were concerns with his measurements, he was pulled off the line on which he was working, and asked to take a test on measurements.

Initially, claimant was told he had five minutes to take the measurements test (Employer's 3). Claimant was bothered by this time limit and bothered that he was asked to take a test that he had twice completed successfully. Subsequently he was told by a supervisor that there was no time limit on the test, but he just needed to complete it. Claimant refused to take the test repeatedly. Coworkers and union representatives urged claimant to take the test so he would not be deemed insubordinate. Claimant refused, and was eventually escorted out of the building and subsequently released from his employment.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant willfully violated employer's policy concerning insubordination. Claimant received documentation regarding insubordination when he was hired. Claimant was warned concerning this policy on the date of the incident and was pulled aside by union representatives and given opportunities to change his mind to take the test. After claimant refused to take the test on eight or more occasions, he was escorted from the building.

The last incident, which brought about the discharge, constitutes misconduct because claimant refused repeatedly to take a test that was requested of him. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

## **DECISION:**

The decision of the representative dated May 7, 2014, reference 05, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for

insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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