

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PRASATHPHONE PHONDETH
Claimant

APPEAL NO. 11A-UI-10757-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE AMERICAS
TIRE OPERATIONS LLC**
Employer

**OC: 07-17-11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 5, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 8, 2011. The claimant participated in the hearing. Jim Funcheon, divisional human resources manager, and Jeff Higgins, human resources section manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time tire builder for Bridgestone America's Tire Operations from June 15, 2005 to July 15, 2011. The employer's attendance policy states employees will receive a counseling step when they accumulate five unexcused absences within a rolling nine-month period. After that, the employee must go nine months from his most recent unexcused absence or go to Step One of the attendance disciplinary policy. After reaching Step One he must go another nine months without accumulating another incident of absence or he will be placed on a Step Two written warning. If he has another incident of absence during the following rolling nine months, he receives a final written warning. If he has another unexcused absence during the next nine months the employee is terminated for accumulating nine attendance points. A full-day absence results in one point and a tardy or leaving early results in one-half point. The claimant was absent December 7, 2009, due to properly reported illness and received one point; he left early December 12, 2009, after receiving an emergency phone call that his mother attempted suicide and received one-half point; he was tardy March 5, 2010, due to transportation problems and received one-half point; he was absent May 1, 2010, due to personal business and received one point; he was tardy May 15, 2010, and received one-half point; he was tardy July 9, 2010, due to personal business and received one-half point; he left early August 3, 2010, after receiving an emergency phone call and received one-half

point; he received one-half point August 21, 2010, for either leaving early or being tardy for personal business; he received one-half point December 6, 2010, for either leaving early or being tardy due to illness; he was tardy January 13, 2011, because he was in a custody battle with his ex-wife and received one-half point; he was 12 minutes tardy February 14, 2011, because of the custody issue; he was sent home early February 19, 2011, by the on-site nurse for having a high fever and received one-half point; he was absent February 20, 2011, due to properly reported illness and received one point; he was absent June 26, 2011, due to properly reported illness and received one point and his employment was terminated July 15, 2011. The claimant received an initial counseling August 26, 2010, after accumulating five incidents of absenteeism; he was placed on a Step One written warning January 31, 2011, for accumulating six incidents of absenteeism; he was placed on a Step Two written warning March 1, 2011, for accumulating seven incidents of absenteeism; he was placed on a Step Three written warning March 11, 2011, for accumulating eight incidents of absenteeism; before being terminated July 15, 2011, following his illness June 26, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct, since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did accumulate nine absences between December 7, 2009 and June 26, 2011, in violation of the employer's attendance policy, four of those absences, including the final absence, were due to properly reported illness. Although he failed to comply with the employer's attendance policy, nine incidents of unscheduled absenteeism over an 18 month period is not particularly excessive. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The August 5, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw