

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA L MOORE**  
Claimant

**TITAN TIRE CORPORATION**  
Employer

**APPEAL NO: 11A-UI-14931-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/23/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated November 14, 2011, reference 01, that held she was discharged for misconduct on October 26, 2011, and benefits are denied. A telephone hearing was held on December 12, 2011. The claimant participated. Sgambatti, HR Manager, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on July 6, 1998, and last worked as a full-time quality lab technician mason on October 25, 2011. The claimant received an employee handbook that contained the policies of the employer. The claimant knew she was required to take and pass an annual safety test. A recent employer notice advised employees they needed to have an 80% score to pass the test, and a failure to do so, could result in employment termination.

The claimant failed to pass the annual safety test on three occasions with scores of 79, 77 & 77. The employer discharged her for failing to pass the test. The claimant had passed the test in prior years. She complained about the test environment and taking it after working long hours as reasons for her failure. Claimant was one of three or four employees out of about five hundred who were terminated for failing to pass the test.

**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.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on October 26, 2011, for a repeated failure to pass an annual safety test.

The employer advised claimant and other employees that it was a job requirement to pass the safety test. She was given three opportunities to do so, but failed to obtain the required proficiency score that is a standard of behavior the employer has a right to expect. The failure constitutes job disqualifying misconduct, because claimant had passed such an exam in prior years.

**DECISION:**

The department decision dated November 14, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on October 26, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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