

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHAN W TAYLOR**  
Claimant

**APPEAL NO. 11A-UI-01665-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CROSS-DILLON TIRE INC**  
Employer

**OC: 01/16/11**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Cross-Dillon Tire, Inc. (employer) appealed a representative's February 8, 2011 decision (reference 01) that concluded Jonathan W. Taylor (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on March 11, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Ron Dehm appeared on the employer's behalf; three other witnesses were available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 16, 2009. He worked full-time as an off-the-road (OTR) or oversized tire technician in the employer's Davenport, Iowa shop. His last day of work was January 5, 2011. The employer discharged him on that date. The stated reason for the discharge was repeated failure to follow orders and observe safety directives.

On January 4 the store manager, Mr. Dehm, had instructed the claimant to do a job at a client's location, to remove a tire from a rim that was to be welded. The claimant acknowledged the instruction. However, he did not dismount the tire from the rim, but rather simply took the valve core out. When the client discovered this on January 5 when the welding specialist it had arranged to repair the rim arrived, it called Mr. Dehm extremely upset; Mr. Dehm then sent another technician to dismount the client's tire, and confronted the claimant. The claimant admitted that he had not dismounted the tire as instructed, explaining that he did not see it as necessary, that he had never done it that way in the past, and removing the valve core should

be sufficient to prevent the risk of explosion during the weld. Mr. Dehm reminded the claimant that just on December 31, 2010 the employees had been instructed to watch a safety video regarding the risk of explosion and the need to completely dismount a tire before welding, and that the crew had been specifically instructed then that the company was going to follow the procedure of dismounting tires prior to welding. The claimant acknowledged that Mr. Dehm had given that instruction also on December 31, but again indicated that he did not agree with the need for that procedure.

The employer's disciplinary process allows for three written warnings prior to discharge. The claimant had received a written warning on August 23 for an incident on August 20, and had received two written warnings on December 10, one for an incident on December 3 and the other for an incident on December 9. The December 3 incident also involved failure to follow a safety procedure, and the December 9 incident also involved a failure to follow the employer's instructions. Because of the claimant's actions on January 4 after the specific directive given on December 31, as well as these prior warnings, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective January 16, 2011. The claimant has received unemployment insurance benefits after the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failure to follow the employer's directives, particularly on a safety issue and after prior warnings, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant

acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's February 8, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 5, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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