

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE W HAMMER

Claimant

APPEAL NO: 11A-UI-13113-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE CORP

Employer

OC: 08/21/11

Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 23, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Jim Fucheon, the division human resource manager, Tom Barragan, Jeff Knight, and Kendra McDonald appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal?

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2010. The claimant worked as a full-time production employee. The claimant received a copy of the employer's falsification policy. The policy informed employees they could be discharged if they falsified entries on any documents or entries in the employer's system. (Employer Exhibit One.)

On June 11, 2011, the employer gave the claimant a letter of discussion for low production. On a production sheet, the claimant recorded he had five hours of down time, when it was only four. The employer reminded the claimant to make accurate reports. The claimant's job was not in jeopardy as of mid-June 2011.

The employer did an internal audit after its inventory records indicated there was a certain number of products and the employer could not find them. The audit revealed the claimant's production or activity records did not correspond with the number on the tickets that he generated.

On the production reports, the claimant recorded the number that was on the equipment's counter. He also inputted the number on the ticket he generated for the PICS system. Between July 18 and August 6, 2011, there were 11 days the reported produced product was more than the amount the

claimant reported he actually produced. The difference between the two amounts varied from 9 to 207. (Employer Exhibit One.)

The employer's investigation revealed the claimant was the only employee who had discrepancies between what he reported he produced and what he actually produced. When the employer asked the claimant how this could have happened, the claimant had no explanation. The employer concluded the claimant falsified the employer's production documents and discharged him on August 21, 2011.

The claimant established a claim for benefits during the week of August 21, 2011. A notice of claim was mailed to the employer's corporate office in Tennessee. Since the address of record does not name a specific person, mail addressed to the corporate office goes to the mail room. Someone opened and forwarded the Notice of Claim to TALX in time so the protest was filed timely. When TALX sent the completed Notice of Claim, the Department was advised to send notices to TALX, the employer's representative, in unemployment insurance matters.

Shortly after the notice of claim was mailed, a corporate office employee personally contacted the Department's Tax Department on September 9 and directed the Department to change the employer's address of record so all unemployment insurance documents were sent to TALX. On September 23, 2011, a representative's determination was mailed to the claimant and employer. The employer's determination was again mailed to the Tennessee address, not the address for TALX. The September 23 determination held the claimant qualified to receive unemployment insurance benefits as of August 21, 2011.

The September 23, 2011 determination sat in the employer's mail room unopened until October 4, 2011. On October 4, someone opened this mail and then faxed the determination to TALX. McDonald, a TALX representative, received the faxed determination on October 4. She filed the employer's appeal on October 5, 2011. McDonald noticed the deadline to appeal the determination was October 3.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the employer's appeal was filed after the October 3, 2011 deadline for appealing expired.

The employer's failure to file a timely appeal was due to an Agency error, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. In this case, the Department had been informed by TALX and the employer before September 23 the address of record was the TALX address, not the corporate address. Both TALX and the employer gave the Department the correct mailing address and requested the address be corrected immediately. The employer's address of record was not properly or timely corrected. (As the date of this decision, the employer's address of record still has not been corrected.) Since the employer established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts show the employer gave the claimant a warning about low production or more specifically failing to accurately report the time his machine was down on June 11, 2011. The claimant reports the amount of product he produced and also inputs the amount of product he actually produced on a ticket or the PICS system. The numbers the claimant reported on Production Activity documentation and the ticket he generates were not the same for 11 days, July 18 through August 6, 2011. The claimant was the only employee who had discrepancies between the amount he reported he produced and the amount he actually produced. Without any explanation for the difference between these numbers that the claimant reported, the evidence indicates he failed to accurately report these numbers. Since there were 11 days this occurred, the evidence shows the claimant committed work-connected misconduct. Even if the claimant did not deliberately misreport numbers, his negligence or carelessness is to such a degree that he committed work-connected misconduct. As of August August 21, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's September 23, 2011 determination (reference 01) is reversed. The employer did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the appeal. The employer discharged the claimant for reasons that constitute work-connected misconduct. As of August 21, 2011, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he 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. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits he has received since August 21, 2011, will be **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw