BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

NATHAN KASDORF	:	
	:	**HEARING NUMBER:** 10B-UI-04463
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
ACE ELECTRIC INC	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2A, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Nathan Kasdorf (Claimant) was employed as a full-time warehouse manager for Ace Electric (Employer) from January 3, 1995 to February 19, 2010. (Tran at p. 2-3; p. 10).

The Claimant received a verbal warning February 27, 2009 over maintaining a regular schedule as instructed. (Tran at p. 5; p. 12; Ex. 1). On May 21, 2009, the Claimant received a second verbal warning for continued non-compliance with the schedule and failure to follow the proper time-off request procedure. (Tran at p. 5; Ex. 1).

The Employer moved into a new warehouse in July 2009. (Tran at p. 5). In August 2009 Owner Bob Schulty asked the Claimant to move the pallet and conduit racking into the new warehouse from the side of the building where it had been stored. (Tran at p. 5; Ex. 1). The Claimant had not completed the installation of the racking by February 19, 2010, and Mr. Schulty fired the Claimant for this. (Tran at p. 3; p. 5; p. 8; p. 9; Ex. 1 [protest form]). But for the Claimant's failure to move the pallet and conduit racking he would not have been fired. (Tran at p. 3; p. 5; p. 8; p. 9; Ex 1 [protest form]). The Claimant was never informed that he would be disciplined for failure to complete the installation. (Tran at p. 16). The chore is one that required several people, and they had other important matters to attend to as well. (Tran at p. 17).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

Willful disregard of a policy – even a minor one – can constitute insubordination and result in disqualification. But just probably angering the boss is not enough to deny one benefits. In fact it is not enough to be denied benefits that you act contrary to policy. You have to know you are acting contrary to policy. *E.g. Infante v. IDJS*, 364 N.W.2d 262, 265 (Iowa App. 1984). The violation, in other words, must be a willful or wanton disregard of an employer's interest. 871 IAC 24.32(1)(a). For example, in *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa App., 1992) the Court found that since the employer's handbook gave three days of unexcused absences the claimant could not be disqualified for only one such absence. In *Henry v. Iowa Dept. of Job Service*, 391 N.W.2d 731 (Iowa App. 1986) an employee had mishandled cash register receipts. The Court found that since the employer had no manual explaining its rules on handling cash, then the employer had failed to show that the claimant's "actions were motivated by anything other than a good faith misunderstanding of this rule and did not amount to deliberate disregard." *Henry* at 737. In the absence of a policy then specific warnings may, of course, provide the necessary notice for a finding of willful misconduct. *E.g. Flesher v. IDJS*, 372 N.W.2d 230, 232 (Iowa 1985).

Here the evidence fails to disclose anything but a specific request to do a given task. The task required the assistance of other workers. These workers, as well as the Claimant, were busy with other things as well. The Claimant made the judgment that moving the pallet, in the midst of a move the Employer called a "rather long transition," was not a top priority item. In short, as warehouse manager he obviously pushed the task to the back burner while he took care of other things. This case is similar to Richers v. Iowa Dept. of Job Service, 479 N.W.2d 308 (Iowa 1991) where the Court noted that the employee "faced several management problems of great magnitude" and that "the fact that she did not recognize the trust deposit problems to be of greater importance to her employer…does not prove misconduct." Id at 312. Here the Claimant likewise made a good faith error in judgment over what tasks to prioritize. "[G]ood faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute." 871 IAC 24.32(1)(a). We therefore find that the Employer has failed to prove that the pallet incident, even when considered in light of the Claimant's prior warnings, rose to the level of misconduct.

The Claimant was discharged over the pallet issue and we have ruled this was not misconduct. The discharge was thus not caused by misconduct and is therefore not disqualifying. *See generally, West v. Employment Appeal Board*, 489 N.W.2d 731, 734 (Iowa 1992) ("must be a direct causal relation between the misconduct and the discharge"); *Larson v. Employment Appeal Bd.,* 474 N.W.2d 570, 572 (Iowa 1991) (record revealed claimant was fired for incompetence; claim that she was fired for deceit was supplied by agency post hoc); *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 669 (Iowa 2000) (incident occurring after decision to discharge is irrelevant).

DECISION:

The administrative law judge's decision dated May 14, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside.

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John A. Peno

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Elizabeth L. Seiser

RRA/fnv

DISSENTING OPINION OF MONIQUE KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

RRA/fnv