IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DIANE J LEHNER
5465 – 21ST AVE
MARION IA 52302

GOVERNMENT EMPLOYEES
INSURANCE CO
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-05525-DT
OC: 05/01/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Diane J. Lehner (claimant) appealed a representative's May 19, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation of employment from Government Employees Insurance Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 13, 2005. The claimant participated in the hearing. Bill Stasek of Employer's Unity appeared on the employer's behalf and presented testimony from two witnesses, Tina Kueter and Scott Markel. Based on the evidence, the arguments of the parties, 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 February 23, 1998. Since approximately March 2001, she worked full time as a service supervisor in the employer's Coralville, Iowa customer service and sales center. Her last day of work was May 2, 2005. The employer discharged her on May 5, 2005. The reason asserted for the discharge was irregular transactions on the claimant's own policy.

Prior to January 17, 2005, the claimant had an automobile insurance policy covering five vehicles. On January 17, 2005, the claimant, through another employee, deleted three vehicles from coverage and added one vehicle. The vehicle that was added was a 1998 Pontiac. The claimant designated that this vehicle was her primary means of transportation, and indicated that it would be driven 20 miles to work one-way five days per week, or 10,000 miles per year. Three minutes later, the claimant's policy was modified to reduce the mileage on the vehicle to one mile one-way five days per week, 3,000 miles per year. The claimant denied directing or instructing that the reduction be made. The claimant did notice an increase in her premium, as she expected by adding a newer vehicle, but she did not realize that her premium had not gone up as much as it should have had the proper mileage been left in.

In April 2005, the claimant and her husband were separating. On April 13, 2005, the claimant learned from her attorney that her husband's driver's license had previously been suspended. Through an associate, the claimant had her husband removed from coverage under her policy. On April 15, 2005, the claimant was unexpectedly forced to leave the home she had shared with her husband and son. She was able to take her primary vehicle with her, and her son was able to take another vehicle with him, but there was no way to remove the third vehicle, which was a van also in the claimant's name alone, as she was barred from returning to the premises. She did not immediately have a definite place to go, but ultimately moved into her father's home.

On April 23, 2005, the claimant's husband contacted the employer seeking insurance coverage for himself. He indicated that he had "care, custody, and control" of a vehicle which the employer had believed was in the claimant's "care, custody, and control." On April 29, 2005 there was an on-line change to the claimant's policy, apparently made by the claimant's husband, changing the billing address to her father's address. The employer, concerned about the contact by the claimant's husband apparently indicating a covered vehicle was not in fact under the claimant's "care, custody, and control," began investigating the transactions, and also discovered the irregularity of the January 17, 2005 transaction. The employer concluded that the claimant had engaged in self-dealing against the employer's interests, in part because in 2003 the claimant had not acted promptly to have her son added to her policy upon the son receiving his driver's license.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is

misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
   a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or

2. Carelessness or negligence of such degree of recurrence as to:
   a. Manifest equal culpability, wrongful intent or evil design; or
   b. Show an intentional and substantial disregard of:
      1. The employer's interest, or
      2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is, in essence, her failure to ensure that her policy with the employer accurately reflected her actual driving and risk status. The employer believes that the claimant caused her rate in January 2005 to be lower than it would have been by causing the mileage to be lower than actual. The claimant denied this accusation. The employer provided no specific testimony that change had been made at the claimant's instruction or direction. Secondly, the employer asserts that the claimant engaged in misdealing by not properly or timely reporting the actual physical location of the vehicles covered by the policy at all times, in this case, during the time after the claimant was removed from her prior residence April 15, 2005. Under the circumstances of this case, the claimant's failure to have secured custody of the other vehicle covered by the policy or to make further changes to the policy to reflect the then-status of all of the vehicles by May 2, 2005 was not unreasonable, and at worst would be the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 19, 2005 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/pjs