IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHAD LYBARGER
Claimant

WMX TECHNOLOGIES INC
Employer

APPEAL NO: 12A-UI-06127-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04-29-12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 18, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 19, 2012. The claimant participated in the hearing. Michael Illig, District Manager and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time driver for Waste Management of Iowa from February 12, 1998 to April 26, 2012. The employer's policy states, "Always push a container instead of pulling it, when possible" (Employer's Exhibit One). The policy allows drivers to pull dumpsters out from against a wall, enclosure, etc., creating enough room for them to get behind it to start to move it before they can push it out but emphasizes drivers should push rather than pull the containers to avoid injury. The driver is allowed to make the determination regarding whether he must pull the dumpster out far enough for him to get behind it and push it out. On April 23, 2012, the claimant was servicing a commercial account and pulled a dumpster approximately one foot away from a corral so he could get behind it and push it the rest of the way out. In doing so he injured his back and reported the situation to the employer. On April 10, 2012, District Manager Michael Illig did a ride along with the claimant and told him he was doing too much pulling which could possibly cause a back injury. On March 14, 2012, the claimant was moving a container when it struck a door enclosure, damaging the trim around a parking structure. The claimant reported the incident to the employer immediately and the employer determined it was a preventable accident and the claimant's responsibility. The employer issued the claimant a written warning following that incident and the claimant signed the warning. On April 9, 2012, the claimant was involved in a motor vehicle accident with the employer's truck and after an investigation it was determined the claimant was at fault for the

incident. The employer issued the claimant a written warning but he refused to sign it. The employer's policy states that if an employee accumulates three preventable incidents in one year his employment is terminated. As a result of the April 23, 2012, situation the employer notified the claimant his employment was terminated April 26, 2012.

To date, the claimant has not made a weekly claim for benefits or received benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 N.W.2d 661, 665 (Iowa 2000). The claimant was a long term driver and relied on his experience in determining when he needed to pull a dumpster

away from a wall so he could get behind it and push it as required by the employer. The employer's policy states that drivers should push rather than pull a container when possible. (Emphasis Added). While the claimant did injure his back in doing so, he credibly testified he had no choice but to pull the container far enough away from the wall to get behind it and push it. Although the employer told the claimant he was pulling too much during their ride along April 10, 2012, the claimant relied on his best judgment in determining he needed to pull the container away from the wall April 23, 2012. The claimant accidentally hit the trim around a door in a parking structure March 14, 2012, and had a motor vehicle accident April 9, 2012. Those both were preventable but the final incident April 23, 2012, which resulted in his injury and subsequent termination, was not. Consequently, the administrative law judge must conclude the claimant's actions do not constitute disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 18, 2012, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs