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

SIDNEY C COLEMAN	:	
	:	
Claimant,	:	**HEARING NUMBER:** 15B-UI-00598
	:	
and	:	
	:	**EMPLOYMENT APPEAL BOARD**
HEARTLAND EXPRESS INC OF IOWA	:	**DECISION**
	:	
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: 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Sidney Coleman (Claimant) worked as a full-time over the road interstate driver for Heartland Express Inc. (Employer) from November 2009 until he was fired on December 5, 2014. The Claimant understood the employer required drivers to immediately contact the employer if they were "placed out of service." The Claimant understood that he was not to drive for the Employer so long as he was in "out of service" status.

On June 20, 2014, the Claimant stopped at a DOT scale. At this time the Claimant's license was suspended because he had failed to pay for a speeding ticket in California. At the June 20 stop, while an official checked the Claimant's load, the official told the Claimant he was driving with a suspended CDL. As a result of his suspended license, the Claimant was placed out of service. A DOT official escorted the Claimant to a truck stop and advised the Claimant to contact his employer.

The Claimant intentionally did not call the Employer's safety department as required by the Employer's policies. The Claimant intentionally did not cease driving the truck as required by the Employer's policies and by the law. Instead, the Claimant delivered the load that day and then drove home.

On June 21, the Claimant contacted the Employer about a leave of absence under FMLA. The Employer granted the Claimant FMLA as of June 20.

When an employee was checking motor vehicle records on August 18, Safety Director McGlaughlin discovered that the Claimant had been placed on out of service on June 20. Since the safety department had not been contacted by the Claimant, the Employer had no record of this, and had not previously known about it. The Employer investigated and learned for the first time that the Claimant drove the Employer's truck after he had been placed out of service.

The Claimant's physician released the Claimant to return to work on December 5. The Employer talked to the Claimant on December 5 about the June 20 incident. On December 5, the Claimant acknowledged having driven the truck after he was placed out of service. He acknowledged that he knew this was against policy. The Employer terminated the Claimant because he knowingly violated the Employer's policy by failing to contact the Employer's safety department and driving after he had been placed out of service. The Employer did not terminate sooner because the Claimant was on FMLA leave, due to mental health issues, and the Employer could not have effectively interviewed him about his side of the story until December 5. The termination was unrelated to the Claimant's medical condition or the medications that he takes.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2015) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
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> 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).

More specifically, continued failure to follow reasonable instructions constitutes misconduct. *See Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *See Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. "[W]illful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983)(*quoting Sturniolo v. Commonwealth, Unemployment Compensation Bd. of Review*, 19 Cmwlth. 475, 338 A.2d 794, 796 (1975)); *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). The Board must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. *See Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Good faith under this standard is not determined by the Petitioner's subjective understanding. Good faith is measured by an objective standard of reasonableness. Otherwise benefits might be paid to someone whose "behavior is in fact grounded upon some sincere but irrational belief and where the behavior may be properly deemed misconduct." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988). "The key question is what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); *accord O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Employer's evidence that it has no record of any contact from the Claimant to its safety department, that it has no employee named "Amy," and that the Claimant admitted on December 5 that he had been told to contact safety but chose not to. We do not credit the Claimant's evidence that he did contact the safety department, nor his claim that his decision to drive while "out of service" was anything but a volitional and deliberate decision.

Given our factual rulings, we have little trouble finding misconduct in this case. The Employer had specific requirements for an out of service driver. One, contact the safety department. Two, don't drive for the Employer when out of service. This second requirement is required by law. *E.g.* 761 IAC 520.6 ("A person shall not operate a commercial vehicle…in violation of an out-of-service order issued by an Iowa peace officer."). We have concluded that the Claimant intentionally chose not to follow these two directives. His reasons for doing so are not detailed in the record since he claims he actually contacted the safety department, and that it was somehow inadvertent that he drove after being placed out of service. Moreover, good faith is measured by an objective standard, and applying that standard we cannot find a claim of some

sort of mental confusion to meet the standard of a reasonable person, even if we were inclined to credit it. In any event balancing the possible reasons for the two acts disregarding instruction against the Employer's interests in not having its truck driven by someone who is out of service due to a suspended license we find that the Claimant's actions were clearly insubordinate. And no matter what rubric you use to analyze the Claimant's conduct, the bottom line is that he intentionally ignored reasonable requirements of the Employer and in so doing endangered important interests of the Employer, that is, the Claimant engaged in a deliberate violation or disregard of standards of behavior which the Employer has the right to expect of employees. For this he is disqualified.

We briefly address the issue of current act. We note that the Administrative Law Judge found that the Employer could not realistically do any kind of discipline until the Claimant had returned to work. We concur. This is in part because the Employer would normally conduct an investigation, to get the Claimant's side of things, prior to making a decision. Such investigations should be encouraged, and precipitous termination discouraged. Further the delay here is clearly not caused by an attempt to exploit the Claimant's labor, as he was not at work, nor caused by any other improper purpose. Under these circumstances the policies underlying the current act doctrine are not implicated, and the termination is for a current act, even though delayed. *See Milligan v. EAB*, 10-2098 (Iowa App. June 15, 2011).

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

> 871 IAC 23.43(3) Rule of two affirmances.
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> a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.
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> b. However, if the decision is subsequently reversed by higher authority:
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> (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
> (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
> (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the **Claimant will not be required to repay benefits** already received.

DECISION:

The administrative law judge's decision dated February 13, 2015 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)"a".

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv