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The Claimant received his commission slip for the May 24th sale on August 7th, 2019. (38:55) Upon reading it, he discovered he was getting charged for the floor mat (\$163). This upset him because it was a slow month and it significantly impacted his paycheck. The Claimant immediately went to Dan (sales manager) who told him, "It is what it is...you're going to get charged for it." (39:43) He proceeded to discuss the matter with Nick McCutcheon (vice president) because he believed it was unfair. Scott asked if there was something he could do about the charge back. Nick responded he was the one who wrote it up because the Claimant failed to contact the customer who wanted to order new mats. (38:30) The Claimant denied Nick's accusation and attempted to prove he contacted the customer by showing him his cell phone screenshots of texts to her. (39:55; 36:20; 28:43) The Employer became upset, ignored the Claimant's attempts to prove himself, and the men exchanged heightened, angry words. The Employer began rushing the Claimant out of his office, telling him to get his stuff and get out or he would call the police. The police came, as the Claimant gathered his many belongings and left. Scott attempted to contact the owner, but his call was not returned. The Claimant received no prior warnings for any policy violations.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

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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).

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 attribute more weight to the Claimant's version of events.

The record shows the Claimant reasonably believed, based on his discussion with a previous manager in early when Ms. Fritz test drove the vehicle, that the company was not responsible for replacing a missing Weather Tech mat if the manufacturer's original mats were still in place in the vehicle. While we understand the Employer's angst at the manner in which the Claimant handled the situation, that angst does not justify the Employer's withholding \$163 of the Claimant's pay. The Employer failed to substantiate there was any policy providing any employee was financially responsible for replacing products if that employee did not adequately address a customer's request. No evidence was adduced to show the Claimant was even aware such a policy existed such that he could be put on notice of its violation. The Claimant received no prior warnings for how he handled the matter prior to being 'docked'. And while it certainly got the Claimant's attention, the Employer's actions were illegal. The Claimant was justified in being upset with the situation. When he tried to prove he had been in contact with the customer, his efforts were summarily rejected. The Claimant denied he used profanity at the Employer, or that he threatened anyone. Rather, he asserts it was the Employer who raised his voice repeatedly at him and rushed him out of the premises. Based on this record, we conclude the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated October 11, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

Kim D. Schmett

Ashley R. Koopmans
