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

TRAVIS D JACKSON	:	
	:	**HEARING NUMBER:** 14B-UI-05691
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
BRIDGESTONE AMERICAS TIRE	:	
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. 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:

Travis Jackson (Claimant) worked for Bridgestone (Employer) as a full-time production worker from July 11, 2011 until he was fired on April 25, 2014.

The Employer has a policy specifically governing access to electrical panels. This Policy, number 22, states, "only authorized personnel should be getting inside of electrical panels. DO NOT: 1. Reset circuit breakers (inside the panel) if it is not within your job description." Ex. 2. As a major reminder of this policy for staff the electrical panels are locked, and only authorized personnel are given keys. The Claimant had been given a copy of this company policy, and was aware he was not to access electrical panels. Ex 3.

On April 25, 2014 the Claimant had used a long piece of metal to gain access into an electrical panel box while trying to reset the circuit with the piece of metal. He also had a coworker help him try to jimmy open the cabinet so he could get the metal in. The machine he used to fabricate tires went down, and the

Claimant was trying to re-set the circuit. The Claimant's income was based on the number of tires he produced. No one was immediately available to help him, so he took it upon himself to try and fix the problem. The box was hot with 480 volts and had the Claimant touched the wrong components with that piece of metal he would have been killed.

The Employer discharged the Claimant on April 29, 2014 because Claimant violated company policy 22 which states that only authorized personnel should have access to electrical panels.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2014) 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). "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board,* 616 N.W.2d 661, 666 (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. "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 find credible the Employer's description of the video of the Claimant's action, in particular, that the Claimant had used a metal bar to access the electrical box.

The Employer's policies are entirely reasonable in limiting access to dangerous areas, here electric equipment, to authorized personnel. The Claimant disregarded those policies, knowing that he was violating them, because he was impatient, didn't want to lose money while production was down, and thought he could get away with it. Weighing the reasons for non-compliance against the Employer's request, we feel we must favor the Employer. A basic tenet of the employer-employee relationship is that the Employer makes the rules on how its own equipment is to be used. All the Claimant has to support his disregard of the rule is that he thought the punishment would not be so bad. Yet it is clear that he knew he was acting contrary to policy. We have found credible the Employer's evidence that the policy was well-known. Nor do we believe that the Claimant seriously thought it was OK to violate a policy by bypass the lock just because other people did. For this conclusion to follow, even assuming the Claimant saw such other violations, we would have to find that the Employer management *knew* of these violations and did nothing. We find that the record does not support such a conclusion. In short, the Claimant did wrong, knew he was doing wrong, and did it anyway. The Claimant deliberately disregarded the standards of behavior which the Employer has the right to expect of employees and is disqualified from benefits.

We are unpersuaded by any argument that the Claimant was only trying to help the Employer. First, we have found that the Claimant was motivated by his own self-interest, not an altruistic desire to benefit the Employer. An employee best benefits the Employer by following directions. Second, the point of instructions is that an employer's judgment of what is the "right thing" should govern. Often, focusing on a single aspect of job performance results in an employee doing something that is patently the "wrong thing." For example, a nurse may not redistribute unprescribed medications to save money for patients, nor may a police officer intentionally violate the Bill of Rights just because he is motivated by a desire to stop crime, nor can a delivery person speed just because he wants to get the pizza there while it is warm. Intentional violation of specific instructions cannot be justified by the violator's second-guessing of that instruction. On balance we find the Claimant's insubordination unjustified, and as he was on notice that it was serious insubordination and a very serious safety violation, we disqualify.

DECISION:

The administrative law judge's decision dated June 20, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, the Claimant 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).

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

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Kim D. Schmett

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Ashley R. Koopmans

DISSENTING OPINION OF CLOYD (ROBBY) ROBINSON:

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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Cloyd (Robby) Robinson

RRA/fnv