IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DONALD R POOLE Claimant **WESLEYLIFE** Employer	**APPEAL 16A-UI-06794-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/29/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 16, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2016. Claimant participated and was represented by Mike Norris, attorney at law. Employer participated through Krystal Drumheller, Director of People and Culture and Brett Peterson, Assistant Director and was represented by Caroline Semer of Talx UCM Services Inc.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a driver beginning on November 25, 2013, through May 25, 2016 when he was discharged.

The claimant was off work from February 23 until April 29 for an injury that is not the subject of this case. On May 25 the claimant was driving the van from the employer's location at 18Th and Martin Luther King, Jr. to The Bishop Drum home in Johnston. He was on the freeway during a rainstorm. He thought the van was hydroplaning because there was something wrong with the steering or the tires. Prior to arriving at Bishop Drum he pulled off the freeway at the Easton exit and called Mr. Peterson. Mr. Peterson had only been the claimant's direct supervisor since February 18, 2016 and the claimant had been off work during most of that time. During the phone call the claimant expressed his concern to Mr. Peterson. Mr. Peterson had the claimant finish the trip and then told him to return to the employer's location where he would have Eileen check out the tires and the van. After dropping off the client the claimant made his way back to the employer's location but stopped at a Tires Plus location to have the front of the van examined and to obtain an estimate on new tires. The claimant had not been given any specific instruction that he was not to stop and Mr. Peterson had him continue the trip with a client in the van. The estimate cost the employer nothing. The Tire's Plus employee determined that the van needed two new tires. Within one month of the claimant's complaint,

the employer did have the two tires replaced. While driving it was within the claimant's discretion to stop to use the restroom or to get something to eat. The claimant was trying to help Mr. Peterson by obtaining an estimate for new tires.

The claimant was discharged by the employer for insubordination and because he had been given a final warning for alleged insubordination on February 18. The employer did not provide any details of the prior warning. The warning of February 23 was claimant's only warning during his employment prior to his discharge.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has not met their burden of proof to establish misconduct sufficient to justify a denial of unemployment insurance benefits. It was within the claimant's discretion to stop for restroom or food breaks without prior permission. The claimant stopped and obtained an estimate for two tires, which the van did need, on his way back to the employer's location. He was not given a specific instruction not to stop anywhere; he was casually told that the employer would check the van when he returned. The estimate cost the employer no money. The conduct for which claimant was discharged was not sufficient disregard of the employer's interests to support a denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 16, 2016, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs