

The sort manager, Jason Lumley, verbally warned Mr. Perez twice during one evening about his mishandling of packages. (12:00-12:14; 12:41-12:59)

The conveyor is a couple feet off the concrete floor from where the Claimant was observed throwing packages from approximately six feet high from the van, which caused damage to approximately twelve packages. (10:00-10:42; 20:40-21:16) There is a roller mechanism (unload assist) onto which the Claimant could have placed the packages to avoid throwing them onto the convey, which the Claimant bypassed. (18:34-19:25) Brent Tjelmeland, the operations manager, helped tape up the damaged boxes. (14:50-16:40) Some packages were damaged so badly, Brent had to re-tape the entire box to keep its contents from spilling. (17:45-17:58) The Claimant left early and did not assist in repairing the damaged packages.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) 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)).

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 record establishes that the Employer is in the business of transporting packages in a safe and expedient manner. The Claimant had knowledge of the Employer’s handling policy as well as should have known and realized the importance of following protocol to ensure the safe transfer of packages. Although the Employer did not have a specific date as to the verbal warnings issued to Mr. Perez on another night he failed to follow the policy, the Employer provided credible testimony that the December 12th incident was not the first time. Any reasonable person could foresee that the manner in which he handled packages could result in damage, and potentially create liability for the Employer. The Claimant did not participate in the hearing, and therefore was unavailable to refute any of the Employer’s testimony or any of the witness’s firsthand testimony about the final incident. Based on this record, we conclude that the Employer satisfied its burden of proof.

DECISION:

The administrative law judge’s decision dated April 13, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)”a”.

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