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

SAVANNA R STEVENSON	:	
	:	**HEARING NUMBER:** 11B-UI-00935
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
BEHAVIORAL TECHNOLOGIES CORP	:	

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 ALLOWED IF OTHERWISE ELIGIBLE

The claimant 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:

Savanna Stevenson, (Claimant), worked for Behavioral Technologies Corp. as a full-time developmental specialist from June 2, 2009, until she was fired on December 27, 2010. (Tran at p. 2; p. 17; Ex. A, p. 9).

When the Claimant was hired, she was put on notice that she have health insurance or that she buy into the Employer's group health insurance program. (Tran at p. 3; p. 7; p. 18; Ex. 1-3). The company handbook, a copy of which was given to the Claimant, indicated that she was required to participate in the Employer's health insurance program, at least for herself. (Tran at p. 7; p. 9; p. 17-18; Ex. 1-3). The Employer is required by their health insurance carrier (Wellmark Blue Cross/Blue Shield) to have a minimum percentage of its employees to participate in the health insurance program. (Tran at p. 3; p. 5; p. 11; Ex. 6). In the alternative, creditable coverage can be supplied from another source for a portion

of the employees. (Tran at p. 10; p. 11; Ex. 5). In attempt to be fair to all employees, the Employer requires 100% of its

employees to have insurance coverage or creditable coverage. (Tran at p. 11; p. 13-14). Initially, the Claimant provided evidence to the Employer that she had title XIX coverage for herself and thus was not required to purchase the group health insurance benefits offered by the Employer. (Tran at p. 4; Ex. 4). The Claimant lost her title XIX insurance in July 2010. (Tran at p. 18-19; p. 26-27).

In December 2010, the Claimant contacted the Employer and explained that the Claimant no longer had title XIX insurance and she was told at that time that she would be required to purchase the group health insurance offered by the Employer. (Tran at p. 3-5; p. 14).

The cost of the plan was $126.36 per month. (Tran at p. 3; Ex. A, p. 2). The Claimant was told in early December that she had until December 27, 2010, to sign up for the Employer's group insurance or to obtain health insurance coverage on her own. (Tran at p. 5-6; p. 15; p. 20; Ex. A, p. 9; Ex. 7; Ex. 8). The Claimant obtained "Iowa Cares" at no cost to her and provided proof of that to the Employer. (Tran at p. 18-19; p. 20; p. 21; Ex. A, p. 12). Wellmark Blue Cross/Blue Shield subsequently determined that the Iowa Cares program did not meet their requirement that she possess "creditable coverage." (Tran at p. 4; p. 10; p. 22; p. 25; Ex. A, p. 10; Ex. 5). The Claimant did not understand this requirement when she obtained Iowa Cares. (Tran at p. 21-22; Ex. A, p. 11). The Claimant could not afford the $126.36 a month. (Tran at p. 19). She told the Employer she could not afford it. (Tran at p. 6; p. 12; p. 29; Ex. 7; Ex. 8). The Claimant was suspended because she did not participate in the Employer's group health insurance and failed to purchase qualifying health insurance on her own. (Tran at p. 6; p. 7; p. 15; p. 17; p. 22; p. 24; Ex. 7; Ex. 8). She was subsequently separated. (Tran at p. 22).

REASONING AND CONCLUSIONS OF LAW:

Here the Claimant was suspended then lost her job (effectively an endless suspension). "Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved." 871 IAC 24.32(9). We therefore address the issue of misconduct.

Iowa Code Section 96.5(2)(a) (2011) 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).

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).

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 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 have found credible the Claimant's assertion that she just could not afford the Employer's healthcare. After all, it was only her job with the Employer that got her off Title XIX. And she does yet qualify for Iowa Cares. It is entirely credible that the Claimant just did not have the income, nor the assets, to pay for the increased medical premium.

We have a case where the Employer's request is reasonable, and the Claimant's refusal also is completely understandable. In such cases, we are mindful of the direction that misconduct must be deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. For example, when an employee tries her hardest but simply is unable to perform the job, we routinely find this is not misconduct. Here the Claimant did the job fine but was unable to comply with the collateral requirement of health insurance. This inability is no more disqualifying than an inability to do the job. Indeed, it is less so because having health insurance is less relevant to getting the job done – which is, after all, the core of any Employer's interests. On balance, we find the Claimant had good faith reasons for doing what she did, and that misconduct has not been proven.

The Board understands that maintaining a sufficiently large number of participants in its health care group is important to the Employer. But the key is the nature of the conduct alleged to be disqualifying – not just the importance of the policy at issue. In other words, "[m]isconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.* 616 N.W.2d 661, 665 (Iowa 2000); *Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct.App.1995); *Reigelsberger v. Employment Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *Breithaupt v. Employment Appeal Bd.*, 453 N.W.2d 532, 535 (Iowa Ct.App.1990); *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219, 222 (Iowa App. 1983). This case falls squarely within that rule. We understand why the Claimant was discharged but do not find that the Employer has proved this reason sufficient to disqualify the Claimant

DECISION:

The administrative law judge's decision dated March 9, 2011 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

_____
John A. Peno

_____
Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE KUESTER :

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.

_____
Monique F. Kuester

RRA/kk