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

DARREN FRASIER	:	
	:	**HEARING NUMBER:** 15B-UI-12291
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
SPEE-DEE DELIVERY SVC INC	:	
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. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Darren Frasier (Claimant) worked as a full-time driver for Spee-Dee Delivery Svc, Inc. (Employer) from September 9, 2013 until he was fired on November 3, 2014. As a driver the Claimant is required to get a government certification of his physical ability to drive. The Claimant was certified upon his initial hire by St. Luke's, but only for a year due to medical issues. In the fall of 2014 the Claimant was up for recertification but was unable to get it due to medical issues noted by a physician at St. Luke's. He was accordingly off work until he could obtain certification. The Claimant then went to Mercy Clinic in Cedar Rapids. When there he intentionally omitted portions of his medical history so as to not raise problems with his recertification. The Claimant obtained the certification from Mercy and presented it to the Employer. The Employer subsequently discovered that not only did the Claimant obtain the certification from the wrong provider, but when he did so he intentionally failed to disclose critical portions of his medical history. The Claimant thus obtained the certification under false pretenses. The Claimant admitted this when interviewed by the Employer about the issue. The Employer terminated the Claimant for his falsification of his medical history.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2015) 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).

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 Employer's evidence that the Claimant intentionally omitted critical portions of his medical history in order to obtain a legally required certification of physical ability to drive, and that he admitted to this to the Employer in the presence of both of the Employer's witnesses.

Had the Claimant simply went to the wrong hospital as an honest mistake, we would almost certainly agree with the Administrative Law Judge and excuse the error as one made in "good faith." But this case is not one of inadvertence or good faith, but rather a deliberate decision to deceive by omission. This decision to try to obtain a driver certification under false pretenses demonstrated a willful or wanton disregard of the Employer's interest. That interest involves not only compliance with government regulations but also the ability to trust the information from drivers. In general, lying about such important matters is misconduct. *See White v EAB* 448 N.W.2d 691 (Iowa App. 1989); *Sallis v. Employment Appeal Bd.* 437 N.W.2d 895, 897 (Iowa 1989)(dishonesty regarding absences is exacerbating factor). The case is also analogous to an application falsification case. Under the rule for applications "[w]hen a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer." 871 IAC 24.32(6). Here the false information appeared not on the application to work, but on an even more important precursor to working as a driver. We have in the past found that lying on a health history portion of the pre-employment physical is misconduct, and we think the current case is no different. Obviously, the falsification absolutely exposed the Employer to possible penalties and endangered the health and safety of others. The Claimant's intentional omission of portions of his health history in order to obtain a legally required certification to drive is a willful and wanton disregard of the Employer's interests and was a deliberate violation of standards of behavior which the Employer had the right to expect of its drivers. The Claimant is disqualified for misconduct.

DECISION:

The administrative law judge's decision dated December 23, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he 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

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James M. Strohman

RRA/fnv