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

ERNESTO GARCIA	:	
	:	**HEARING NUMBER:** 15B-UI-05451
Claimant	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
REMBRANDT ENTERPRISES 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, 96.3-7

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. 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:

The Claimant, Ernesto Garcia, worked for Rembrandt Enterprises, Inc. from March 17, 2014 through March 31, 2015 as a full-time packager. (7:13-8:03; 56:54-57:34) The Claimant suffered a work-related injury in January of 2015 for which he was placed on restrictions and receiving workers' compensation. (2:35; 5:56; 57:40-58:04; Exhibit A) The Claimant had a 10-lb lifting restriction, which also included movement limitations of no bending, twisting, squatting, or kneeling. (1:216:17-1:26:43; Exhibit A) He worked an 8-hour shift in an area that was in a rotation, which required him to repetitively lift several 6-lb boxes for approximately one hour, which violated his medical restrictions. (18:54-19:26; 20:27-20:55) The Employer accommodated him by having another man assist him when lifting the boxes. Sometimes his job duties, which were repetitive, even under his restrictions caused him back pain. (1:23:37-1:23:48)

On March 30, 2015, the Employer asked Mr. Garcia to carry a 3-lb roll of labels, which the Claimant told him that he was unable to do because the person who helped him was on break, and he was already experiencing pain. (58:09-58:24; 58:39; 59:06; 1:00:08-1:00:47; 1:26:26-1:27:38; 2:04:50-2:05:13) He had worked for three hours placing boxes onto pallets. The following day, he was asked to lift two 6-pound boxes from a conveyor belt onto a pallet which he refused explaining that he was unable to lift them by himself due to his restrictions. (9:42-9:54; 10:05-10:17; 1:00:22-1:00:47; 1:07:05-1:07:16; 1:08:29-1:09:36; 1:10:45-1:11:08; 2:04:24- 2:04:30) In order to comply with the Employer's directive, Mr. Garcia needed to turn off the machine, and lift the boxes one by one, which the Employer did not want him to do, as it slowed down the process. (1:01:25-1:3:34)

The Employer terminated Ms. Garcia for failing to comply with the Employer's directives. (8:05-8:56; 9:07; 13:48-13:54; 1:03:40-1:4:25; 1:4:38; 1:5:40-1:06:27)

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 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 attribute more weight to the Claimant's version of events. Evidence supports that the Claimant was terminated for repeated refusals to comply with the Employer's directives. While the court in *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990) held that a Claimant's continued failure to follow reasonable instructions constitutes misconduct, other courts have held that 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).

As for Mr. Garcia's March 30th refusal to move the 3-lb roll of labels, he testified that he was in pain from previous repetitive movements for which he explained to his supervisor. And while the Employer's request was appropriate given his restrictions, there is nothing in the record to establish that the Employer did not believe him. As for his refusing to lift a 6-lb box on the 31st, which at first glance appeared to be within his restrictions, the Claimant provided a cogent explanation for his noncompliance. In order for him to get the work done in an efficient manner, and without additional assistance, he had to lift 2 boxes (12 lbs.), which would have clearly put him over his less than 10-lb restriction. (He wasn't allowed to stop the conveyor belt, as that would slow down the process. Mr. Garcia provided unrefuted testimony that he was already in pain from repeated squatting and had informed the Employer of this fact. Thus, his refusal cannot be looked upon an insubordinate, or an intentional disregard for the Employer's directives. Rather, he acted in good faith by not violating his medical restrictions. In situations like this, the Board must analyze the circumstances 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.

Mr. Garcia understood that he couldn't work outside his restrictions, lest he suffer physical ramifications by worsening his injury and repercussions from his Employer who was liable for his worker's compensation claim. "In order to be disqualified from benefits for a single incident of misconduct, the misconduct must be a deliberate violation or disregard of standards of behavior which the employer has a right to expect of employees." *Diggs v. Employment Appeal Board*, 478 N.W.2d 432, 434 Iowa App. 1991) (citing *Henry*, 391 N.W.2d at 736). Further, "[w]illful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Pierce v. Iowa Department of Job Service*, 425 N.W.2d 679, 680 (Iowa 1988) (citing *Myers*, 373 N.W.2d 507, 510(Iowa App. 1985). Surely the Employer has a vested interest in Claimant's complying with his work restrictions. His refusal to comply with the Employer's directive was done in good faith and in keeping within his medical restrictions. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. *Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983)*; see also, *Breithaupt v. Employment Appeal Board, 453 N. W. 2d 532, 535 (Iowa App. 1990)*. Based on this record, we conclude that the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated July 27, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for not disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv