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TUXIS OHR'S FUEL, INC. *v.* ADMINISTRATOR, UNEMPLOYMENT COMPENSATION ACT, ET AL.
(SC 18791)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Vertefeuille, Js.*

Argued January 10—officially released July 30, 2013

Vincent T. McManus, Jr., for the appellant (plaintiff).

Krista Dotson O'Brien, assistant attorney general, with whom, on the brief, were *George Jepsen*, attorney general, and *Philip M. Schulz*, assistant attorney general, for the appellee (named defendant).

ROGERS, C. J. This case raises the question of whether the legislature, in enacting a particular provision of Connecticut's Unemployment Compensation Act (act),[1] intended to disqualify an individual from receiving benefits when he loses his commercial driver's license for driving under the influence of alcohol while off duty, and, as a consequence, is discharged from employment for which that license is required. The plaintiff employer, Tuxis Ohr's Fuel, Inc., appeals[2] from the judgment of the Appellate Court affirming the trial court's dismissal of its appeal from the decision of the Board of Review of the Employment Security Appeals Division (board). The board had sustained an award of benefits to the plaintiff's employee by the defendant, the Administrator of the act,[3] after rejecting the plaintiff's claim that General Statutes § 31-236 (a) (14) barred that award. The plaintiff claims that the Appellate Court improperly held that § 31-236 (a) (14), which disallows unemployment benefits to a discharged employee who "has been disqualified under state or federal law from performing the work for which [he] was hired as a result of a drug or alcohol testing program mandated by and conducted in accordance with such law," did not apply to a commercial truck driver who, while off duty, loses his license for driving under the influence and, therefore, is unable to work. After a close examination of this provision and other laws relating to disqualification from unemployment benefit eligibility, we are constrained to disagree with the plaintiff and affirm the judgment of the Appellate Court. Connecticut's statutes and regulations governing unemployment compensation do not provide for disqualification in these circumstances, and, because unemployment compensation benefits are entirely a creature of statute, any change to the law in this regard must be effected by the legislature.

The relevant facts and procedural history are not in dispute. The Appellate Court's opinion recounts them as follows. "On December 18, 2007, pursuant to General Statutes § 31-249b, the plaintiff . . . filed a timely appeal to the Superior Court to challenge a decision of the [board] finding that a former employee of the plaintiff was entitled to unemployment benefits. The employee, who worked as a driver for the plaintiff, had his commercial driver's license suspended as a result of his arrest for driving, on his own time, while intoxicated. Agreeing with the board's construction of the relevant statutes, the court dismissed the appeal." *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, 127 Conn. App. 739, 741, 16 A.3d 777 (2011).

The employee "had been employed by the plaintiff as a fuel oil delivery truck driver since October 12, 2004. State law requires a person driving that type of vehicle to have a commercial driver's license. General Statutes

§ 14-44a.[4] On July 20, 2007, the employee informed the plaintiff that the department of motor vehicles had suspended his commercial driver's license for one year, effective July 21, 2007, because he had been arrested after an automobile accident that had occurred when he was driving his own car during nonworking hours. He had registered a blood alcohol level of .216 percent on a Breathalyzer test. State law provides that the holder of a commercial driver's license will lose his or her license for one year if a blood alcohol test shows a blood alcohol level in excess of .04 percent, when driving a commercial vehicle, or .08 percent when driving any other motor vehicle. General Statutes § 14-44k (c).[5] Although the employee's misconduct did not occur in the course of his employment, the plaintiff discharged him because he could no longer perform the work that he had been hired to do.

"The plaintiff argued at trial, as it had argued unsuccessfully in the underlying administrative proceedings, that in light of the fact that the employee had lost his state commercial driver's license as a result of his own misbehavior, he was ineligible for unemployment benefits. According to the plaintiff, the employee's ineligibility is established by § 31-236 (a) (14), because, as the plaintiff construes that provision, the employee had disqualified himself from performing the work for which he had been hired by failing a state alcohol testing program, as manifested by his state mandated license suspension.

"The trial court rejected the plaintiff's argument. It noted that the [board], relying on § 31-236 (a) (2) (B), had a well established policy of confining disqualification for unemployment benefits to cases of wilful misconduct *in the course of employment*. In this case, the employee's misconduct, although concededly wilful, had not occurred in the course of his employment. The court furthermore agreed with the [board's] construction of § 31-236 (a) (14) to require an employer to establish that its employee 'test[ed] positive for alcohol as part of a *testing program conducted by* [*his employer*], the plaintiff.'[6] (Emphasis in original; footnotes omitted.) Accordingly, the court dismissed the plaintiff's appeal." *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, supra, 127 Conn. App. 741–43.

The plaintiff then appealed from the judgment of dismissal to the Appellate Court, arguing that the trial court had construed § 31-236 (a) (14) improperly to require "that an employee be disqualified due to the use of drugs or alcohol as documented by an *employer* testing program." Id., 743. Examining the plain language of § 31-236 (a) (14), the Appellate Court first agreed that the statute did not necessarily contemplate a program established by an employer. Id. The Appellate Court ultimately concluded, however, that the other statutory provisions pursuant to which the employee was tested

for alcohol by the police and subsequently lost his license, thereby rendering him unable to perform his job for the plaintiff, did not constitute a "state law *program*" within the meaning of § 31-236 (a) (14).[7] (Emphasis in original.) Id., 746. The Appellate Court therefore affirmed the trial court's judgment. This appeal followed.

The plaintiff claims that General Statutes §§ 14-227a,[8] 14-227b[9] and 14-44k[10] together constitute a "statutory program developed by the state of Connecticut to deal with drunk drivers" and, further, that that program is the legally mandated "drug or alcohol testing program" contemplated by § 31-236 (a) (14). The plaintiff, citing Merriam-Webster's Unabridged Dictionary, notes the ordinary meaning of the word " 'program' " as " 'a plan or system under which action may be taken toward a goal,' " and argues that the cited statutory provisions, which govern drunk driving offenses and license suspension, clearly fall within that meaning. According to the plaintiff, the goal of the cited statutes is to remove dangerous intoxicated drivers from the state's highways so as to increase public safety. Moreover, the plaintiff contends, the statutes provide a system for doing so and specifically provide for severe penalties. The plaintiff identifies § 14-227b as "defin[ing] the testing program" pursuant to which its employee was tested and, as a result, lost his commercial driver's license by operation of § 14-44k (b). In the plaintiff's view, "[t]here is no other program 'mandated and conducted in accordance with state law' [to] which the legislature could have been referring" when it enacted § 31-236 (a) (14), and the statute "cannot be talking about an employer testing program for the simple reason that [an] employer testing program cannot suspend and revoke [an] employee's driver's license."

The defendant, in response, contends that the term "program," as used in § 31-236 (a) (14), is ambiguous, and that extratextual evidence indicates that the legislature, when passing this provision, was referring specifically to employment based drug and alcohol testing programs that are required by state or federal law for certain categories of employees in high risk jobs, and not to discretionary, police administered testing resulting from off-duty motor vehicle incidents. The defendant cites to previous board decisions applying the provision in the described circumstances, and utilizing a test that makes clear that an employer testing program is what the statute contemplates. Moreover, according to the defendant, the correctness of this interpretation is clear when § 31-236 (a) (14) is considered in the context of the act as a whole. We agree with the defendant.

We begin with the standards applicable to a court's review of decisions of the board. "To the extent that an administrative appeal, pursuant to General Statutes

§ 31-249b, concerns findings of fact, a court is limited to a review of the record certified and filed by the board of review. The court must not retry facts nor hear evidence. . . . If, however, the issue is one of law, the court has the broader responsibility of determining whether the administrative action resulted from an incorrect application of the law to the facts found or could not reasonably or logically have followed from such facts. Although the court may not substitute its own conclusions for those of the administrative board, it retains the ultimate obligation to determine whether the administrative action was unreasonable, arbitrary, illegal or an abuse of discretion." (Internal quotation marks omitted.) *Mattatuck Museum-Mattatuck Historical Society* v. *Administrator*, *Unemployment Compensation Act*, 238 Conn. 273, 276, 679 A.2d 347 (1996).

The parties do not dispute the relevant facts, but rather, the meaning and applicability of § 31-236 (a) (14). The proper construction of this statute "is a question of law over which we exercise plenary review. . . . When interpreting a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. General Statutes § 1-2z." (Citations omitted; internal quotation marks omitted.) *Fullerton* v. *Administrator*, *Unemployment Compensation Act*, 280 Conn. 745, 755, 911 A.2d 736 (2006). However, "[w]hen a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *State* v. *Thompson*, 307 Conn. 567, 577–78, 57 A.3d 323 (2012).

We recently have elaborated on the role of agency interpretations in cases involving questions of statutory construction. In such cases, "the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation . . . ." (Internal quotation marks omitted.) *Longley* v. *State Employees Retirement Commission*, 284 Conn. 149, 163, 931 A.2d 890 (2007). Conversely, "an agency's interpretation of a statute is accorded deference when the agency's interpretation

has been formally articulated and applied for an extended period of time, and that interpretation is reasonable." Id., 164. Deference is warranted in such circumstances "because a time-tested interpretation, like judicial review, provides an opportunity for aggrieved parties to contest that interpretation. Moreover, in certain circumstances, the legislature's failure to make changes to a long-standing agency interpretation implies its acquiescence to the agency's construction of the statute. . . . For these reasons, this court long has adhered to the principle that when a governmental agency's time-tested interpretation [of a statute] is reasonable it should be accorded great weight by the courts." (Citation omitted; internal quotation marks omitted.) Id.

Finally, when interpreting provisions of the act, "we take as our starting point the fact that the act is remedial and, consequently, should be liberally construed in favor of its beneficiaries. . . . Indeed, the legislature underscored its intent by expressly mandating that the act 'shall be construed, interpreted and administered in such manner as to presume coverage, eligibility and nondisqualification in doubtful cases.' General Statutes § 31-274 (c)." (Citation omitted.) *Mattatuck Museum-Mattatuck Historical Society* v. *Administrator, Unemployment Compensation Act*, supra, 238 Conn. 278; see also 76 Am. Jur. 2d 735, Unemployment Compensation § 14 (2005) ("[p]rovisions of an unemployment compensation statute imposing disqualifications for the benefits available should be strictly construed in favor of the claimant").

We begin with the statutory language at issue. In general, § 31-236 (a) enumerates all of the circumstances under which an individual shall be disqualified from receiving unemployment compensation benefits, and it further provides a number of definitions for the terms used therein. Among the disqualifying events listed is subdivision (14), which provides that "[a]n individual shall be ineligible for benefits . . . [i]f the administrator finds that the individual has been discharged or suspended because the individual has been disqualified under state or federal law from performing the work for which such individual was hired as a result of a *drug or alcohol testing program* mandated by and conducted in accordance with such law . . . ." (Emphasis added.) General Statutes § 31-236 (a) (14). "[D]rug or alcohol testing program" is not further defined.

In general usage, "program" means "a plan of procedure: a schedule or system under which action may be taken toward a desired goal"; Webster's Third International Dictionary (1993) p. 1812; or "a plan of action to accomplish a specified end . . . ." Random House Dictionary (2d Ed. 1993) p. 1546. The parties do not dispute this definition, but disagree as to what type of

"drug or alcohol testing program" the statute is referencing. The plaintiff contends that the legislature could have meant only the state statutory scheme directed toward removing intoxicated drivers from the road, while the defendant insists that the term encompasses any employment based drug or alcohol testing that is conducted pursuant to a federal or state mandate, which typically exists for positions necessitating a high level of safety.

The plaintiff's proposed interpretation is reasonably plausible. Sections 14-227a, 14-227b and 14-44k together do provide a system, along with specific procedures, pursuant to which intoxicated drivers are identified via testing and, thereafter, prevented from operating motor vehicles, commercial or otherwise. See footnotes 5, 8 and 9 of this opinion. It seems more accurate, however, to characterize the statutorily authorized testing as within the *discretion* of law enforcement officials to conduct, rather than as "mandated" by any of the cited provisions. See General Statutes § 14-227b (b) (describing testing as "at the option of the police officer"). Additionally, if the plaintiff's interpretation is correct, the only category of employees who could be "disqualified" from performing their work under § 31-236 (a) (14) would be drivers, and the only "program" that would result in their disqualification would be the cited statutes. Section 31-236 (a) (14) does not simply state this, however, but uses the more general terms of "[a]n individual" and "drug or alcohol testing program," which suggests that a broader application is contemplated.

The defendant's offered construction also is reasonably plausible. Certain hazardous occupations are heavily regulated on the state or federal level or both, with drug testing required as a condition of employment and dismissal resulting if an employee fails to pass such testing. At the same time, § 31-236 (a) (14) does not refer specifically to an "employment based" or "employer's" drug or alcohol testing program, but simply to a "drug or alcohol testing program . . . ." Because neither party's proposed interpretation fits neatly within the statutory language, nor is either interpretation obviously incongruent with that language, we conclude that § 31-236 (a) (14) is susceptible to more than one reasonable construction. Accordingly, the statute is ambiguous and resort to extratextual interpretive aids is warranted.[11] See *State* v. *Thompson*, supra, 307 Conn. 578–79.

Subsection (a) (14) was added to § 31-236 in 1995 as part of No. 95-323 of the 1995 Public Acts (P.A. 95-323), which generally aimed to tighten eligibility qualifications for unemployment benefits and reduce fraud and overpayment in the administration of those benefits. Our examination of the limited legislative history associated with this act discloses that it supports the interpretation advanced by the defendant. Specifically,

during the Senate debate on the underlying bill, Senator Louis C. DeLuca, a cosponsor of that bill, indicated that disqualification from a failed drug or alcohol test would result when "it is part of [an employer's] work rules and it is a state or federal requirement that [its employees] take drug tests such as truck drivers, school bus drivers and people of that nature who are required by law to take drug tests, [and] if they fail, they can lose their job[s]." 38 S. Proc., Pt. 7, 1995 Sess., p. 2329. Thereafter, another legislator asked Senator DeLuca why the type of disqualification contemplated by subdivision (14) was not already covered by another portion of § 31-236 (a) that was under consideration, namely, disqualification for a "violation of a reasonable and uniformly enforced rule or policy of the employer . . . ."[12] General Statutes § 31-236 (a) (16); see 38 S. Proc., supra, p. 2347. Senator DeLuca responded that the newly proposed disqualification was listed separately so as "to definitely address federal and state laws that required drug tests," but that other employers, if they did not employ "for instance, truck drivers that have to take a federal drug test, if they were to say that they wanted to make sure that it is a policy of their company, that they would not allow drugs and/or alcohol during work hours and if it affected someone's ability, they could be subject to dismissal, that would be a reasonable and uniformly enforced work rule or policy," the violation of which could disqualify an employee from receiving benefits under the other subsection being discussed. 38 S. Proc., supra, pp. 2347–48.

During the subsequent debate in the House of Representatives, Representative James A. O'Rourke III clarified the purpose of the bill as follows: "[W]hat we are saying here, ladies and gentlemen, and let me be clear about it, is for workers who are mandated under federal or state law for performing, for not failing drug or alcohol tests, they can be, and they are in . . . public safety sensitive positions in [the] motor carrier, aviation, railroad, mass transit sectors, we are saying today that if that is your job, don't do drugs. Don't fail a drug test because there will be more serious consequences as a result of this bill." 38 H.R. Proc., Pt. 20, 1995 Sess., p. 7239.

A bill analysis provided by the Office of Legislative Research in connection with the legislation is consistent with the foregoing discussions.[13] The analysis described the provision as follows: "The bill denies unemployment compensation benefits to anyone who is suspended or fired from his job because he was disqualified from performing his duties for failing a drug or alcohol test required by state or federal law and conducted according to those laws. Under current law, such claimants are not automatically barred from receiving benefits. . . . This provision mainly affects employees in safety-sensitive positions in the motor carrier, aviation, railroad, and mass transit transportation sectors,

because they are subject to mandatory drug and alcohol testing under federal law. Under state law, drivers of commercial motor vehicles engaged in intrastate commerce are also subject to mandatory drug testing following the federal scheme." Office of Legislative Research, Amended Bill Analysis, Substitute Senate Bill No. 847, "An Act Concerning Additional Recovery to the Unemployment Compensation Fund of Fraud Overpayment," (1995), available at http://www.cga.ct.gov/ps95/ba/1995SB-00847-R01-BA.htm (last visited July 18, 2013).

We have examined and, in large part described, the entire available legislative history for § 31-236 (a) (14). There is no mention in that history that the provision was intended to apply in any other context than employment related drug and alcohol testing that is required under state or federal law, as described by Senator DeLuca and Representative O'Rourke. Particularly, there is no discussion anywhere of the state statutes pertaining to drunk driving offenses.

Because § 31-236 (a) (14) has been the law for nearly two decades, we also have reviewed the board's database of published decisions to discern whether there exists a long-standing administrative construction of the provision. See generally Connecticut Employment Security Appeals Division, Appeals Decision Library, available at http://ctboard.org/adlib.asp (last visited July 18, 2013). When the statutory citation is entered as a search term, 128 decisions of the board are retrieved. Although some of those decisions include only tangential references to § 31-236 (a) (14), the majority of them involve application of the statute, or a finding that it is inapplicable due to the type of employee involved or the particular circumstances at hand, to instances of *workplace based* drug and alcohol testing of employees. The decisions collectively reveal the defendant's articulation of detailed prerequisites that must be satisfied before benefits will be denied pursuant to § 31-236 (a) (14), tracking the statute's requirements that testing be mandated by state or federal law and conducted in accordance with that law. See, e.g., *Gebeau* v. *All-Star Transportation, LLC*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 1158-BR-11 (February 10, 2012) ("[i]n order to prevail under . . . § 31-236 [a] [14], the employer must demonstrate that: [a] state or federal law required the drug test the employer directs its employee to undergo; [b] the federal pre-conditions for testing were met, i.e., the testing was done under circumstances meeting the federal conditions for random, reasonable suspicion, return-to-duty follow-up, and post-accident testing and was pursuant to a policy that satisfies the minimum requirements articulated in the federal regulations; and [c] the testing procedures were in accordance with the federal regulations"[14]). Those prerequisites were first articulated by the board in 1996, shortly after the passage of P. A. 95-323; see *Howell* v. *Bridgeport*, Dept. of

Labor, Employment Security Appeals Division, Board of Review Case No. 1396-BR-96 (September 27, 1996); and have been applied consistently since that time. See, e.g., *Hairston* v. *Northern Pipeline Construction Co.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 1133-BR-05 (February 17, 2006) (pipeline operator; subject to random drug testing pursuant to 49 C.F.R. Pts. 199 and 40, Research and Special Programs Administration regulations for pipeline operators); *Schwarzmann* v. *NEFCO Corp.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 1380-BR-05 (November 9, 2005) (truck driver; subject to drug testing under federal and state law, 49 C.F.R. Pt. 382 and General Statutes § 14-261b [b] [1]); *Brady* v. *Penn Maritime, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 483-BR-02 (May 23, 2002) (merchant marine officer; subject to mandatory drug testing under Coast Guard and federal Department of Transportation regulations, 46 C.F.R. § 16.101); *Lawson* v. *Double A. Transportation, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 1653-BR-99 (November 8, 2000) (school bus driver; random drug testing mandated by 49 C.F.R. §§ 382.103 and 382.305); *Pelrin* v. *AGC, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 924-BR-97 (August 31, 1998) (airplane parts inspector; subject to mandatory drug testing under Federal Aviation Agency regulations, 49 C.F.R. § 121.455 and Pt. 121, App. I [III]).[15]

Additionally, the question before this court today was not, from the board's perspective, an issue of first impression. On at least three prior occasions, employers argued before the board that police administered drunk driving tests fell within the purview of § 31-236 (a) (14). Each time, the board disagreed. See *Haas* v. *USA Hauling & Recycling, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 861-BR-09 (July 28, 2009) (rejecting claim that § 31-236 [a] [14] precluded award of benefits to commercial driver who lost license after off-duty arrest for driving while intoxicated); *Deane* v. *Pace Air Services, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 222-BR-00 (March 29, 2000) (same, as to tractor trailer truck driver); cf. *Saltarella* v. *A & B Auto Salvage, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 862-BR-09 (July 24, 2009) (§ 31-236 [a] [14] inapplicable to claimant who lost license for his off-duty refusal to take Breathalyzer test as directed by local law enforcement official).[16]

The board's interpretation of § 31-236 (a) (14) as being applicable only to state or federally mandated, employment based drug or alcohol testing is consistent and long-standing and, moreover, is entirely in line with the available legislative history of the statute. The board

has applied the statute in this fashion with considerable frequency. Notably, since subsection (a) (14) was added eighteen years ago, the legislature has amended § 31-236 six times. If the legislature believed that the board was applying the provision incorrectly, it is likely that it would have responded with a clarifying amendment. Additionally, as we will explain hereinafter, the board's interpretation is true to Connecticut's general policy, as reflected in its statutes and regulations, of disqualifying unemployment compensation claimants for *workplace* misconduct only. Under these circumstances, the defendant's interpretation of § 31-236 (a) (14) is a reasonable one to which we should afford considerable deference. In sum, in light of the statutory language, legislative history and remedial purpose of the act, we agree that the defendant's construction of the statute is the better one.

We recognize that some courts in our sister states, in cases involving individuals situated similarly to the plaintiff's employee in the present matter, have concluded that those individuals are ineligible for unemployment compensation benefits. In so doing, however, those courts have relied on statutory schemes that differ from Connecticut's in important ways. Typically, statutes governing unemployment compensation preclude employees from collecting benefits if they leave work "voluntarily." See, e.g., General Statutes § 31-236 (a) (2) (A). Some courts, interpreting that word broadly, have employed the "constructive quit" or "constructive discharge" doctrine, whereby an individual is deemed to have left work voluntarily if he or she voluntarily engaged in actions that made it likely he or she would be discharged from employment, specifically, by committing motor vehicle violations that led to the loss of an occupationally required license. See, e.g., *Yardville Supply Co.* v. *Board of Review*, 114 N.J. 371, 375–77, 554 A.2d 1337 (1989) (truck driver who lost job after driving privileges suspended for driving while intoxicated during nonworking hours "left work voluntarily" within meaning of statute). That doctrine was rejected, however, long ago in Connecticut; see *Lewis* v. *Administrator*, *Unemployment Compensation Act*, 39 Conn. Supp. 371, 372–73, 465 A.2d 340 (1983) (rejecting claim, on basis of constructive quit doctrine, that three employees who were discharged after losing their driver's licenses left work voluntarily because their termination was brought about by their own conduct in violating motor vehicle laws); *Bertini* v. *Administrator*, *Unemployment Compensation Act*, 39 Conn. Supp. 328, 331–32, 464 A.2d 867 (1983) (constructive quit doctrine has no basis in our statutes); and the defendant thereafter promulgated a regulation[17] that clearly precludes the doctrine's application. See Regs., Conn. State Agencies § 31-236-18 ("[i]n order to establish that an individual left work voluntarily, the [a]dministrator [of the Unemployment Compensation Act] must find that

the individual committed the *specific intentional act of terminating his own employment*" [emphasis added]).

At other times, our sister states have treated a claimant's loss of an occupationally required license, due to off-duty motor vehicle violations, as disqualifying "misconduct" under the applicable state statute. See, e.g., *Look* v. *Maine Unemployment Ins. Commission*, 502 A.2d 1033, 1034–35 (Me. 1985) (telephone serviceman's loss of required license due to off-duty arrest for operating vehicle while under influence of intoxicating liquor was disqualifying misconduct). In these cases, however, the statute at issue specifies that misconduct is disqualifying if it is " 'connected with' " the claimant's employment. See, e.g., id., 1034. Our state's comparable provision, however, is more narrowly drawn. In Connecticut, an employee is disqualified from receiving unemployment compensation benefits if he or she has been discharged for "wilful misconduct *in the course of the individual's employment* . . . ." (Emphasis added.) General Statutes § 31-236 (a) (2) (B). That phrase is further defined, in the defendant's regulations, as "tak[ing] place *during working hours*, at a place the employee may reasonably be, and while the employee is reasonably fulfilling the duties of his employment or otherwise performing any service for the employer's benefit." (Emphasis added.) Regs., Conn. State Agencies § 31-236-26c (a). Thus, in *Lindsey* v. *Commercial Contractors*, *Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 1786-BR-97 (December 8, 1998), the board held that a claimant's loss of his occupationally required license, for an off-duty arrest for driving while intoxicated, did not meet this test, even if it did have an indirect impact on his employer. See also *Rafferty* v. *F & G Realty*, *Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 692-BR-97 (December 8, 1998) (same, even though required license was " 'intrinsically linked' " to claimant's ability to perform services for employer).

The rejection of the constructive quit doctrine, and the requirement that disqualifying misconduct occur during working hours, are basic, long-standing features of Connecticut's unemployment compensation system which, for the most part, our legislature has not seen fit to change. Section 31-236 (a) (14), because it may disqualify a claimant from receiving unemployment compensation benefits due to his or her *off-duty* misconduct, namely, drug or alcohol consumption, and in the absence of his or her specific, intentional act of terminating his or her own employment, creates an exception to the general rules governing disqualification. As we have determined, this particular exception was intended to apply only in specific, narrowly defined circumstances. Although we seriously question whether the state's provision of benefits to an individual who loses his occupationally required license for operating

under the influence, and the imposition of the cost of those benefits on an innocent employer, are consistent with Connecticut's strong public policy against driving while under the influence, we also are mindful that, as a reviewing court, our role in this area is limited. As the Appellate Court aptly observed, "[e]ligibility for unemployment compensation and disqualification for unemployment compensation are both entirely statutory." *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, supra, 127 Conn. App. 740. Consequently, what "should be covered by or excluded from the operation of the [act] . . . is a matter for legislative determination." (Citation omitted.) *Winnie* v. *Administrator, Unemployment Compensation Act*, 169 Conn. 592, 593, 363 A.2d 1029 (1975); see also General Statutes § 31-236e (a) ("the determination of a claimant's eligibility for unemployment compensation benefits shall be based solely on the provisions of [the act] and any regulations adopted pursuant thereto"). As with any statute, "[c]ourts may not by construction supply omissions . . . or add exceptions merely because it appears that good reasons exist for adding them. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature." (Internal quotation marks omitted.) *Mayfield* v. *Goshen Volunteer Fire Co.*, 301 Conn. 739, 758, 22 A.3d 1251 (2011). The specific provisions of the act affect both employers and employees and reflect a careful balancing of their interests. Accordingly, whether an additional disqualification should be added to § 31-236 (a), so as to preclude the receipt of benefits in cases like the present one, is a question we leave for the legislature.[18]

The judgment is affirmed.

In this opinion PALMER, EVELEIGH and VERTEFEUILLE, Js., concurred.

* This appeal originally was argued before a panel of this court consisting of Chief Justice Rogers and Justices Norcott, Palmer, Zarella and Eveleigh. Thereafter, Senior Justice Vertefeuille was added to the panel and she read the record and briefs and listened to a recording of oral argument prior to participating in this decision.

[1] General Statutes § 31-222 et seq.

[2] We granted the plaintiff's petition for certification to appeal, limited to the following question: "Did the Appellate Court properly affirm the judgment of the trial court upholding an administrative construction of General Statutes § 31-236 (a) (14) pursuant to which the employer was held liable for unemployment benefits for an employee truck driver who lost his driver's license for driving while intoxicated?" *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, 301 Conn. 911, 19 A.3d 180 (2011).

[3] The plaintiff's employee, Gerald T. Aleksiewicz, also was named as a defendant but has not participated in this appeal. We therefore refer to the administrator alone as the defendant.

[4] General Statutes § 14-44a (a) provides: "No person may drive a commercial motor vehicle on the highways of this state unless the person holds a commercial driver's license issued by this state or another state, with applicable endorsements valid for the vehicle he is driving."

[5] General Statutes § 14-44k (c) provides in relevant part: "In addition to any other penalties provided by law . . . a person is disqualified from operating a commercial motor vehicle for one year if the commissioner finds that such person has refused to submit to a test to determine such person's blood alcohol concentration while operating any motor vehicle, or

has failed such a test when given, pursuant to the provisions of section 14-227b . . . For the purpose of this subsection, a person shall be deemed to have failed such a test if . . . when driving any other motor vehicle [than a commercial motor vehicle], the ratio of alcohol in the blood of such person was eight-hundredths of one per cent or more of alcohol, by weight."

Although several changes not relevant to this appeal were made to § 14-44k since the time of the employee's offense in 2007; see, e.g., Public Acts 2010, No. 10-110, § 3; subsection (c) has remained unchanged, and for purposes of clarity and convenience, we refer to the current revision of the statute.

[6] There was no evidence presented in the administrative proceedings that the plaintiff even had a drug or alcohol testing program; *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, supra, 127 Conn. App. 743 n.5; let alone that the employee had failed a test administered as part of such a program.

[7] The Appellate Court's rationale for rejecting the plaintiff's claim is not entirely clear. The court purported to avoid construing § 31-236 (a) (14) by observing that the plaintiff, as an evidentiary matter, had failed "to prove the existence of a state *program* . . . ." (Emphasis in original.) *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, supra, 127 Conn. App. 746. Because we understand the plaintiff's argument to be that certain statutes, taken together, comprise the "program," and there is no dispute that the plaintiff's employee was tested, and lost his license, pursuant to those statutes, it is unclear in what regard the Appellate Court considered the evidence to be lacking.

[8] General Statutes § 14-227a (a) provides in relevant part: "No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is eight-hundredths of one percent or more of alcohol, by weight, except that if such person is operating a commercial motor vehicle, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is four-hundredths of one per cent or more of alcohol, by weight . . . ."

We recognize that changes have been made to § 14-227a since the time of the employee's offense in 2007. See, e.g., Public Acts 2009, No. 09-187, §§ 42, 62, 66. Those changes are not relevant to this appeal, however, and for purposes of clarity and convenience, we refer herein to the current revision of the statute.

Other portions of § 14-227a describe, in detailed fashion, the necessary prerequisites for the admissibility, in a criminal prosecution, of a drug or alcohol test or evidence of an individual's refusal to take such a test; see General Statutes § 14-227a (b), (c), (e) and (k); the duties of the commissioner of emergency services and public protection to ascertain the reliability of testing methods and to adopt regulations governing drug and alcohol tests; see General Statutes § 14-227a (d); and the potential dispositions and penalties attendant to charges of operating under the influence, including, inter alia, fines, imprisonment, license suspension, compelled treatment, community service and the installation of an ignition interlock device on an offender's vehicle. See General Statutes § 14-227a (f) through (*l*).

[9] General Statutes § 14-227b (a) provides in relevant part: "Any person who operates a motor vehicle in this state shall be deemed to have given such person's consent to a chemical analysis of such person's blood, breath or urine . . . ."

Although several changes have been made to § 14-227b since the time of the employee's offense in 2007; see, e.g., Public Acts, Spec. Sess., January, 2008, No. 08-1, § 34; subsection (a) has remained unchanged. For purposes of convenience and clarity, references herein to § 14-227b are to the current revision of the statute.

Other portions of § 14-227b explain the procedures applicable when a person refuses to submit to testing or requests an alternative form of testing; see General Statutes § 14-227b (b) and (d); require that an individual's refusal to take a test or failure of a test shall result in the revocation of his or her operator's license and the reporting of the incident to the commissioner of motor vehicles; see General Statutes § 14-227b (c); and provide for the suspension of an individual's operator's license, either with or without a hearing conducted according to specified procedures. See General Statutes

§ 14-227b (e) through (k).

[10] See footnote 5 of this opinion.

[11] After examining the provisions at issue and the broad dictionary definition of "program," the dissent concludes that that term, as used in § 31-236 (a) (14), clearly and unambiguously refers to *both* our statutes governing driving under the influence offenses *and* legally mandated workplace drug and alcohol testing programs. Accordingly, it declines to consider any additional evidence of legislative intent. We disagree that the meaning of § 31-236 (a) (14) is so readily discernible. Our act generally is quite detailed, and § 31-236 in particular employs a high degree of specificity regarding the circumstances that will disqualify a claimant from collecting benefits. Consequently, we decline to conclude, without further inquiry, that our legislature, when drafting § 31-236 (a) (14), contemplated that its application be so vague and unfocused as to encompass both the "program" identified by the plaintiff and those cited by the defendant. Additionally, we are obliged to notice that, although the cited portions of the operating under the influence statutes roughly correspond to the dictionary definition of a "program," they are not, in common parlance, referred to as such. Under the circumstances, a closer examination of legislative intent is necessary.

[12] See General Statutes § 31-236 (a) (2) (B) and (a) (16).

[13] "As we previously have recognized, the fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either house thereof for any purpose. . . . Although the comments of the [O]ffice of [L]egislative [R]esearch are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill." (Internal quotation marks omitted.) *Raftopol* v. *Ramey*, 299 Conn. 681, 734 n.11, 12 A.3d 783 (2011); see also *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 169, 12 A.3d 948 (2011).

[14] Pursuant to General Statutes § 14-261b (b) (1), employers of drivers of commercial motor vehicles operating in intrastate commerce "shall require such driver[s] to submit to testing as provided by federal law pursuant to 49 USC 31306 and 49 CFR Parts 382 and 391 . . . ." It appears that this is the only state statute mandating drug and alcohol testing of a particular class of employees. Accordingly, whether an employment based drug or alcohol test is required by state law or federal law, it is conducted pursuant to federal testing standards.

[15] Consistent with Senator DeLuca's explanation of § 31-236 (a) (14), the board has found the statute inapplicable in cases when claimants failed drug or alcohol tests that were required by their employers, but were *not* mandated by state or federal law. See, e.g., *Burtchell* v. *Applebee's Neighborhood Grill & Bar*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 927-BR-06 (August 25, 2006) (§ 31-236 [a] [14] inapplicable to claimant who worked as restaurant server); *Murratti* v. *Guida Seibert Dairy Co.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 32-BR-03 (September 27, 2003) (§ 31-236 [a] [14] inapplicable to claimant who worked as forklift operator); *Caisse* v. *General Services of Va., Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 436-BR-03 (September 4, 2003) (§ 31-236 [a] [14] inapplicable to claimant who worked as freight unloader).

[16] In its brief to this court, the plaintiff claims that, although § 31-236 (a) (14) was adopted in 1995, "the [defendant] has never applied it . . . ." Moreover, according to the plaintiff, the defendant "ignore[s]" the statute, and there are no agency decisions applying it. In light of the numerous decisions of the board applying § 31-236 (a) (14), albeit not as the plaintiff believes it should be applied, the plaintiff's argument is troubling.

[17] "To assist in interpreting the statutory scheme, General Statutes § 31-236e (b) grants the [A]dministrator [of the Unemployment Compensation Act] authority to 'adopt regulations, in accordance with the provisions of [the Unemployment Compensation Act], which establish all necessary criteria for the determination of a claimant's eligibility for unemployment compensation benefits.' Subsection (a) of the statute specifically provides that 'the determination of a claimant's eligibility for unemployment compensation benefits shall be based solely on the provisions of [the Unemployment Compensation Act] and any regulations adopted pursuant thereto.' General Statutes § 31-236e (a)." *Fullerton* v. *Administrator, Unemployment Compensation Act*, supra, 280 Conn. 757–58.

[18] As the dissent notes in footnote 9 of its opinion, during the 2012 legislative session, a bill was introduced proposing that § 31-236 (a) (14) be

amended so as to disqualify claimants such as the plaintiff's employee from collecting unemployment benefits. Specifically, pursuant to the proposed amendment, a claimant would have been ineligible for benefits if he or she "has been discharged or suspended because [he or she] has been disqualified under state or federal law from performing the work for which [he or she] was hired . . . as a result of the suspension or revocation of [his or her] . . . commercial driver's license . . . ." Raised Bill No. 149, 2012 Sess., § 1. Testimony before the Labor and Public Employees Committee indicates that this bill was introduced in response to the Appellate Court's decision in the present case, as well as agency decisions denying benefits in similar circumstances. See Conn. Joint Standing Committee Hearings, Labor and Public Employees, Pt. 1, 2012 Sess., p. 207, testimony of Michael J. Riley, president of the Motor Transport Association of Connecticut. Subsequently, the bill was amended to retain the allowance of benefits for this type of discharge, but to relieve the employer from charges to its experience account. Substitute Senate Bill No. 149, 2012 Sess., § 1. The substitute bill was reported out of committee, but failed to receive a vote by the full legislature.

We disagree with the dissent that this proposed legislation, had it passed, would have been a "clarif[ication]" of the existing law under § 31-236 (a) (14). Rather, for the reasons we have explained, it would have been a major change to that law.