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

JAMES R LUKES Claimant and **WHIRLPOOL CORPORATION** Employer	:	**HEARING NUMBER:** 18BUI-11952 **EMPLOYMENT APPEAL BOARD DECISION**

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. 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 James R. Lukes, worked for Whirlpool Corp. from August 15, 1994 through October 17, 2017 as a full-time auto press sheer setup and operator. The company and its employees are under union contract. One section of the contract states that an employee may be terminated for "[A]ny tampering with safety devices or equipment or violation of known or published safety rules". Mr. Lukes worked for twenty-three years in the press room doing fabrication. He understood that if one of the old machines did not work, he should notify his group lead, who would instruct him to call maintenance. Oftentimes if maintenance could not fix the problem, he was left to his own devices to figure out something to make the machine work. (45:33-46:17; 51:26)

The Claimant received two coachings during 2017. His first coaching occurred on April 17, 2017 for defective workmanship and low production while performing work 'out of his classification' when on medical restrictions for a work-related injury. (21:30-21:40; 35:29-35:47) He informed the Employer he was working with a wounded shoulder, which caused him pain and slowed down his production. Once his

restrictions were lifted and he returned to his regular machine, his production improved. (35:58-36:44) On October 24, 2017, Mr. Lukes received a written coaching for leaving the premises without prior authorization to move his car. (38:15-38:34) The Claimant did not know that while he was recently on medical leave, the Employer had directed employees to stop leaving work to move their cars during work hours. (38:37-40:10) The Employer warned the Claimant in the written coaching that if he moved his car, again, during work hours, he would be terminated. (40:14-40:23)

On October 27, 2017, the Claimant set up his machine in the usual manner. (41:50) The machine was not working properly and he attempted to adjust the oiler to spray on his material as it should. (41:45-41:54) It either sprayed too much oil or not at all. (41:55-42:00) When he called maintenance in the past, maintenance typically looked the machine over, attempted adjustments, and if that didn't work, maintenance left because the machine was old, and there were no replacement parts available. (42:05-42:25) Mr. Lukes didn't call maintenance; and the lead was not available at the time. He immediately took it upon himself, as he had done in the past, to 'fix' the machine by placing a die block on a rag. The rag became saturated with oil, which subsequently enabled the oil to distribute evenly over the parts. (42:34-42:48) This 'adjustment' allowed the machine to work well for 1,770 parts until the die block vibrated off of the shelf and slid into the machine causing $15,000 damage.

On October 31, 2017, the Employer terminated the Claimant for tampering with safety equipment. The Claimant had never received any prior write-ups for adjusting the machines or breaking a dye during his employment (22:03-22:20); nor he did he break any specific safety regulation when the October 27th incident occurred. (22:30-22:53)

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. The Claimant is a long-term employee having worked 23 years for this Employer in press room fabrication. (41:03) Although he'd been issued two prior warnings, those warnings were for incidents totally unrelated to the final act for which he was terminated.

As for the first coaching, the Claimant provided unrefuted testimony that he was working on a different machine than he was accustomed to while on medical restrictions issued as a result of a work-related injury. His pain level at that time contributed to his low production, which he explained to the Employer. Based on this circumstance, Mr. Lukes' less than usual performance was unintentional and can be directly attributed to his understandably weakened physical state. The Employer did not dispute that his production went back up once he was off restrictions and returned to his old machine.

As to the October 24th incident, the Claimant was unaware that he could no longer leave work to move his car as he and others had done in the past without consequence. Thus, his seeming disregard for the Employer's directive was unintentional based on this lack of knowledge. Once he was warned, he didn't do it again.

Lastly, Mr. Lukes denied that he violated any safety rule or tampered with the machine on October 27, 2017. (52:15) Even the Employer was unable to provide any specific safety regulation the Claimant allegedly violated. In addition, when asked if the proper machine set-up was published, the Employer did not know. (30:40-31:37) Thus, we find the Claimant's testimony that he properly set up his machine was allowed to sometimes 'think outside the box' regarding fixing machine breakdowns is credible. The record establishes that Mr. Lukes acted in good faith, as he had done in the past, in trying to keep the machines going, and production on track, which was in keeping with the Employer's goals. (51:40-51:50) At worst, this was an isolated instance of poor judgement, and was not an intentional violation, of any safety regulation. For this reason, we conclude that the Employer has failed to satisfy its burden of proof.

DECISION:

The administrative law judge's decision dated December 13, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no 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