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

MICHAEL T HARGROVE Claimant and **WEST LIBERTY FOODS LLC** Employer	:	**HEARING NUMBER:** 19BUI-01875 **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, Michael Hargrove, worked for West Liberty Foods, LLC from January 22, 20189 through May 26, 2018 as a full-time live hang employee. The Claimant's position requires him to wear goggles, earbuds, and safety helmet due to working in a loud environment. Due to these conditions, the Claimant is oftentimes unaware that he is speaking louder than necessary when he communicates because the machines are noisy.

On May 8, the Claimant suffered a work-related injury (tears in his shoulder) that caused him "screaming pain." The Employer dropped him off at an offsite medical facility for treatment. While at this facility, the Claimant continued to yell in pain, which caused everyone in the vicinity to stare at him. The technician who positioned him for his MRI suggested he seek additional medical attention with the doctor for pain relief. When he returned to the plant the following day on May 9, 2018, he was issued a write-up for "causing a scene" at the medical facility. The Claimant was concerned because he did not use any profanity, but was merely reacting to the excruciating pain he experienced from the injury.

A couple weeks later, another employee suffered a work-related injury (hand), which caused the Employer to hold an impromptu safety meeting. After Brian Ralston, the Operations Manager, spoke, he asked the employees if they had questions. The Claimant, who was still wearing his earbuds, stood up and loudly suggested the Employer allow employees a third break to minimize workplace stress, i.e., feeling rushed, so as to prevent further injuries. Brian Ralston told him to 'shut-up and sit down.' The Claimant was not aggressive; did not use profanity; and sat down as directed.

The following day, the Employer called the Claimant into his office, issued a second write-up and terminated him for violating the company policy that prohibits disorderly conduct, including threats, intimidation, and distraction by unnecessary shouting or demonstration. The Employee Handbook provides that termination occurs after three write-ups.

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. There is no dispute the Claimant experienced a work-related injury on May 8th that caused him to seek medical attention. His extreme behavior brought on by excruciating pain is not probative the Claimant intended to 'represent' the Employer in a bad light or show an intentional disregard for the Employer's interests in any way. The Employer did not stay with the Claimant during his medical visit; thus, he had no firsthand knowledge of the incident; nor did the Employer provide any corroborating evidence to support its hearsay statements allegedly describing the Claimant's behavior that day.

As for the second incident, the Claimant merely responded to the Employer's request for questions after reiterating safety procedures at an emergency safety meeting. The Claimant's response was not a wholly illogical or unreasonable suggestion in light of his recent experience and given the current accident. The Claimant acted in good faith when he made his suggestion, perhaps, repeatedly, to the Employer *upon the Employer's request*. The court in Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982) 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. 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). According to the Claimant, he sat down when directed to do so.

Although the Employer obviously didn't appreciate or agree with the Claimant's input, that disagreement does not render the Claimant's behavior insubordinate. There is nothing in the record to establish his response was intended to rile up his fellow employees. And even if we were to determine the Claimant's final act was a policy violation, he acted in good faith if he repeatedly expressed his concerns for his own workplace safety and that of his fellow employees. "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). "However, an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause." Id. (citing Woods v. Iowa Dept. of Job Service, 327 N.W.2d 768, 771 (Iowa App. 1982). It is clear from this record, the Claimant did not intend to deliberately violate or disregard the Employer's policy. He complied with the Employer's directive to ask questions, which he did so in an effort to make the workplace safer – a suggestion intended to comport with the Employer's interests. He complied when told to stop talking and sit down. While the Employer may have viewed the Claimant as being too loud and too impassioned

when he spoke, his behavior, at worst, would be an isolated instance of poor judgement that didn't rise to the legal definition of misconduct. After all, the Claimant was used to talking loudly due to working conditions. Either way, we conclude the Employer has failed to satisfy its burden of proof with either incident.

DECISION:

The administrative law judge's decision dated March 29, 2019 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