

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

BOUBKER LAMKADMI

Claimant

and

IOWA PREMIUM LLC

Employer

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HEARING NUMBER: 21B-UI-08511

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

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, 24.32-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two 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, Boubker Lamkadmi, worked for Iowa Premium, LLC, from November 20, 2018 through February 4, 2021 as a full-time production worker. At the start of his employment, the Claimant received a personnel handbook containing the Employer's point system attendance policy. A point is assessed if an employee is tardy, absent a half day or leaves early. If an employee is absent a full day, two points are assessed. Three points are assessed if an employee is a no call/no show.

The Claimant was tardy on three occasions from his lunch break for which he received a warning on December 24, 2020. He also received a warning on December 29, 2020 for leaving without permission.

The Claimant had a dental appointment at 2:00 p.m. for which he requested to get off work at noon. He provided his supervisor with a note from the dentist showing the date and time of his appointment. His

supervisor told him he couldn't go until 1:30 p.m., but the supervisor wasn't available when that time came to authorize his departure. By the time his supervisor arrived, the Claimant left work close to 2:00 p.m. He was late for his appointment, and had to reschedule nearly a month out. The Employer assessed the Claimant a point.

On February 4, 2021, the Claimant had to use the restroom and left his work area. He returned prior to the line's start-up. His supervisor approached him as the Claimant was putting on his gloves. The supervisor chastised him for not having his gloves on before the line started, and directed him to go to the office. The Employer immediately terminated him based on his attendance.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2019) 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 record establishes the Employer has a point system attendance policy for which the Claimant did not deny having knowledge. And while the evidence tells what amount of point(s) can be assessed for which type of absence, the record is void of evidence as to how many points must be accumulated, and what timeframe this accumulation must occur, before an employee is subject to termination. The Employer provided no significant dates, descriptions of infractions, or total points assessed against the Claimant. Rather, Claimant admits to a few tardies and the Employer testified as to two warnings without any corroborating documentation. As for the Claimant's absence for the dental appointment, it is excusable as it was properly reported and the Claimant was authorized to take that time off. We would note, at this point, that an employee exceeding the allotted number of points in a no-fault attendance policy is not dispositive of misconduct. The court in Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. See also, Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007) wherein the court held an absence can be excused for purposes of unemployment insurance eligibility even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Thus, any point assessed for this absence would be excluded for the purpose of our analysis.

As for the final absence, even if it warranted a point assessment, this record falls short of establishing that the Claimant's actions were "...carelessness or negligence of such degree of recurrence as to manifest equal culpability [or] a blatant disregard for the Employer's interests..." 871 IAC 24.32(1)(a), supra. Based on this record, we conclude the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated June 25, 2021 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.

James M. Strohman

Ashley R. Koopmans