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

LISA REAMS	:	
Claimant,	:	**HEARING NUMBER:** 08B-UI-02406
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
WINNEBAGO INDUSTRIES	:	
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

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, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Lisa Reams (Claimant) was employed as a full-time assembler by Winnebago Industries (Employer) from January 4, 2002 through February 8, 2008 when she was discharged for fighting on the job. (Tran at p. 2-3; p. 7; Ex. 1). On the day in question the Claimant and co-worker Lisa Marion had been losing patience with one another. (Tran at p. 5; p. 8; p. 9; p. 13-14). Ms. Marion escalated matters by striking the Claimant in the hand with an air hose and then punching the Claimant in the forehead (apparently going for the eye). (Tran at p. 8). The Claimant retaliated by grabbing Ms. Marion's hair in an attempt to immobilize her. (Tran at p. 8; p. 14). The Claimant did not strike Ms. Marion. (Tran at p. 8). As the fight continued Ms. Marion continued to push the Claimant and throw punches. (Tran at p. 9). The Claimant then closed with Ms. Marion by wrapping her legs around her. (Tran at p. 9; p.

14). This caused the punches to cease and both parties ended up on the floor. (Tran at p. 9; p. 14). At the time

Ms. Marion started the assault the Claimant was in a position where retreat was not possible. (Tran at p. 8; p. 10; p. 14). The Claimant had used the telephone to try and reach her supervisor, turned, and there was Ms. Marion. (Tran at p. 8; p. 10; p. 11; p. 14). As the fight turned into wrestling the two rolled away from the location of the first blow. (Tran at p. 10; p. 14). An employee notified supervisor Michael Prehn of the fight. (Tran at p. 5). When Mr. Prehn arrived on the scene he found the Claimant and Lisa Marion grappling on the floor. (Tran at p. 5; p. 13).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2001) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
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> 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.

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." Huntoon v. Iowa Department of Job Service, 275 N.W.2d, 445, 448 (Iowa 1979).

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).

Fighting at work can be misconduct. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). A discharge for fighting will not be disqualifying misconduct if the claimant has acted in self-defense. Savage v. Employment Appeal Board, 529 N.W.2d 640, 642 (Iowa App. 1995). Although the Employer has the burden of proving misconduct the issue of self-defense in most contexts is an affirmative defense. In Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995) the Court addressed self-defense in an unemployment compensation case. Savage adopted the elements of self-defense from the law of torts and explained "[a] party charged with an assault to invoke the self-defense doctrine, need show" the three listed elements. Savage at 642. While this verbiage places the burden on the party asserting self-defense the quote was in the context of laying out the general principles of the law of assault and thus Savage's value in allocating burdens in unemployment compensation cases is doubtful. Indeed, the statute requires the Employer to prove misconduct, Iowa Code §96.6(2), and one may very well analyze self-defense cases as requiring the Employer to prove that the Claimant engaged in misconduct by fighting without the justification of self-defense. This analysis would simply recognize that proving that the Claimant engaged in fight is not proof of misconduct if the fight was required for self-defense. In any event, we leave the question of burdens for another day since even placing the burden on Claimant we find self-defense.

Placing the burden on Claimant then, the Claimant could prove she acted in self-defense if she shows: 1) freedom from fault in bringing on the problem; 2) a necessity to "fight" back; and 3) attempts to retreat if reasonably possible without increasing peril. Savage v. Employment Appeal Board, 529 N.W.2d 640, 642 (Iowa App. 1995). In assessing the evidence we have relied on the Claimant's descriptions of the events. The Employer supplied only the testimony of Mr. Prehn on how the Claimant came to grips with her nemesis. Mr. Prehn's description does not address who started what and certainly not on who escalated things to violence. (Tran at p. 5). He does assert that the Claimant was "chuck bucking" the other combatant but we have no idea what this is. Does it involve coworker "Chuck Stewart" in some way? We do not know. In any event the details from any witness but the Claimant are vague. The Claimant's description of the commencement of the fight and her actions during the fight satisfy the Savage standard. She had been struck sufficiently hard to cause bruising and had a necessity to fight back to immobilize her assailant. She was in a position where it was not reasonable for her to attempt escape. We recognize that the Claimant may have been responding in kind and antagonizing Ms. Marion prior to any physical contact as part of a continuing give-and-take between the two. The Claimant was not, however, terminated for any such alleged antagonizing. She was terminated for fighting and can only be disqualified if her actions in the fight were misconduct. Given the evidence submitted we conclude that the Claimant acted in self-defense and is not disqualified.

DECISION:

The administrative law judge's decision dated March 27, 2008 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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Elizabeth L. Seiser

RRA/fnv

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John A. Peno

DISSENTING OPINION OF MONIQUE KUESTER :

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

RRA/fnv