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

TAYLOR T MCHATTEN	:	
	:	**HEARING NUMBER:** 14B-UI-07022
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
TYSON FRESH MEATS INC	:	
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. 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:

Taylor McHatten (Claimant) worked for Tyson Fresh Meats, Inc. (Employer) as a full-time production worker from October 28, 2013 until she was fired on May 13, 2014. The Employer's attendance policy has a no-tolerance for falsification of medical documentation. The Employer believed it had issued the Claimant six-written warnings for attendance issues but the Claimant only received two.

The Claimant was at work on May 12th, and then left with permission because she was not feeling well. The Claimant saw her physician on May 12, 2013. Her physician said she could return to work on May 13, 2014. On May 13, 2014 the Claimant returned to the workplace with a note that returned her to work on May 13, 2014. The date looked altered and the Employer questioned the Claimant about it. The Claimant's three-year-old daughter had changed the three into an eight, and had scribbled on the note. The Employer did not believe the Claimant and terminated her on May 13, 2014 because the Employer believed the Claimant had falsified the note.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2014) 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.

"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).

We note first off that while the Claimant had some attendance issues, the Employer did not fire her over attendance. The precipitating cause of the discharge, according to the Employer, is the alleged falsification of the doctor's note. 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 have found credible the Claimant's explanation that the note was not altered by her but rather scribbled on by her daughter. Also we credit the Claimant's evidence that she left on the 12th with permission, went to the doctor, and then did return to work on the 13th with the note. She thus returned on the actual date of the release, and not on the supposedly altered date of the 18th. We note that damaging to the Employer's ability to prove misconduct is that the Employer did not actually offer the two versions of the notes into evidence.

On balance, we find the Employer failed to prove by a preponderance that the Claimant in fact altered the note. Since the Employer discharged for this reason, and since it has failed to prove the Claimant actually did the act of alleged misconduct, we find the Claimant is not disqualified.

DECISION:

The administrative law judge's decision dated August 4, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

RRA/fnv