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

LARRY D BRIGGS

Claimant,

and

JELD-WEN INC

Employer.

HEARING NUMBER: 08B-UI-04913

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 DENIED

The employer 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, Larry D. Briggs, worked for JELD-WEN, Inc. as a full-time sizer machinist from September 17, 2007 through April 23, 2008. (Tr. 2, 15) The employer has a policy (Standards of Conduct Policy, Rules 10, 11, 17) that, specifically, prohibits "Failure to cooperate with instructions from management or carry out work duties in a respectful and appropriate manner (#10)... Use of improper or abusive language(#11)... violation of safety or health regulations... (#17)" (Tr. 3-4, 7-8,

Employer's Exhibit 1– unnumbered p. 4)

On March 5, 2008, the employer issued a written warning to Mr. Briggs for insubordination. (Tr. 7, 13, 14) The claimant was using his cell phone on the floor, which was a safety violation. When manager, Kirk Person, approached him about the matter, Mr. Briggs " … got in his face and said 'you're not my manager; you can't tell me what to do' … Kirk felt [the claimant] was threatening… " (Tr. 11) The write-up included a caveat, " … If this trend continues… further disciplinary action up to termination will occur… " (Tr. 12) The employer directed the claimant to sign the write-up to which Mr. Briggs signed it, stating that it was 'bullsh-t'. (Tr. 12, 16, Employer's Exhibit 1– unnumbered p. 3)

On April 23rd, Ron Wood (the coordinating group manager) saw the claimant's using his cell phone while " … coming down [the] loading dock with a rolling dumpster… " The employer pulled him aside and told him that use of his cell phone in the workplace was inappropriate. The claimant, at the time, came nose to nose with Wood and responded in a threatening manner that he was just checking his time. (Tr. 2-3, 5, 14, 15, 19-20) Wood went on to explain the need for the claimant to remain attentive at all times because of 12,000 lb forklift driving around on the premises. Again, Mr. Briggs reiterated that he was just checking his time and there was no problem with that.

Wood immediately sought the claimant's name and background information as he was taken aback at Mr. Briggs' aggressive stance towards him. (Tr. 3, 5-6) When he learned of his past warning involving the same type of behavior, Mr. Briggs was terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2007) 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 that the employer has a handbook containing policies whose purpose, in relevant part, is to maintain a safe and pleasant work environment. (Tr. 8-9) Although Mr. Briggs, a short-term employee, argues that he never received that handbook, the fact that he received a prior written warning (March 5th) is probative that he had knowledge of the employer's safety expectations, at least, with regard to the use of cell phones in the workplace. His apparent aggressive behavior in that instance also triggered the March 5th warning and was grounds for the employer's placing him on notice that his job was in jeopardy for any other such infractions, which included his belligerent behavior.

As for the claimant's final act, evidence supports that he was on notice that use of cell phones on the floor created a safety hazard and was a violation of the employer's safety regulations. Mr. Briggs should have also known that his confrontational and recalcitrant behavior towards Mr. Wood was insubordination given his previous warning. Although the claimant unequivocally denied responding to Wood at all, much less in any type of offensive manner, we find his testimony not credible given his initial denial of having ever received a prior warning until he was reminded that he signed the March 5th document. (Tr. 16) We find the employer more credible that Mr. Briggs did 'get in his face' after being directed to stop using his cell phone on April 22nd. Such behavior, in light of his past warning, can only be construed as a blatant disregard for the employer's policies and directives. For this reason, we conclude that the employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated June 6, 2008 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall *not* result in an overpayment, nor shall the employer's account be charged pursuant to Iowa Code section 96.6(2) (2008).

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

AMG/kjo