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

DEBRA S CLEMON Claimant and **MUNICIPAL CREDIT UNION** Employer	:	**HEARING NUMBER:** 18BUI-00126 **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, Debra S. Clemon, worked for Municipal Credit Union from April 3, 2008 through November 28, 2017, most of the time as a full-time operations officer. The Employer provided the Claimant with an updated policy manual in early November 2017. (19:20) All employees were expected to report to the assistant manager if an employee had to leave work. If Mr. Hake (CEO) was available, employees were required to report to him.

Ms. Clemon was held at gunpoint during a robbery at the credit union on May 2, 2017, which negatively impacted her. (45:21-45:52) The Employer provided counseling to help with her post-traumatic stress disorder (PTSD) diagnosis in which she sometimes experienced depression and anxiety. (44:48-44:57; 46:18-46:43; 47:22-47:32)

On November 15, 2017, the Employer (Roger Hake, Chief Executive Officer) asked Ms. Clemon to create a letter for him. When she went to the computer and pulled up a letter, she noted the last two paragraphs were gone. (12:30-12:34) Ms. Clemon became upset to which the Employer asked her to type up the rest. (12:50-13:00) The Claimant later became more frustrated; told the assistant manager she had a headache (24:55; 25:36; 26:08-26:12) and left without informing Mr. Hake who was in and whose office she passed on the way out. (13:55-14:00) The next morning, she texted Mr. Hake about 6:00 a.m. to inform him she didn't feel well and wasn't coming in. (25:00-25:07; 27:34-27:53)

The Employer later called Ms. Clemon around 11:30 a.m. (27:54) to inform her she was being placed on unpaid suspension (excepting the Thanksgiving holiday) from November 16th, 2017 through November 27, 2017 for walking off the job. (10:20-11:00; 14:43-14:53; 23:55-24:00; 25:15-24:23) The Employer set up a meeting on November 27th, which he had to postpone until the 28th, to discuss the November 15th incident. (15:03-15:12; 30:16-30:23; 31:40-31:56) When the parties met on the 28th, the Employer presented the Claimant with a letter regarding expected changes in her attitude with fellow employees, performance on the job and that she was on probation. (15:30-15:50; 33:00-33:21) She was also reminded that if she ever had to leave the workplace, she must inform the CEO prior to doing so. The Claimant denied any wrongdoing and went on to say she was not going to work with other employees on the vault or ATM because she felt these employees were hostile towards her. (16:27-16:30; 17:09-18:00; 33:56-34:06) When she was directed to sign the letter in acknowledgement, she refused. (33:55; 34:58; 34:38-34:51; 35:05; 36:26-36:30) The Employer warned her that if she didn't sign, he would have to terminate her. (35:07-35:11) Ms. Clemon responded "ok" to which the Employer escorted her to her desk to retrieve her belongings. (35:20-35:41) Mr. Hakes terminated her on November 28, 2017. (8:45-9:25; 9:37-9:45; 22:55; 35:11)

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 Employer's version of events. The Employer testified that it had a policy requiring all employees to inform the CEO, Mr. Hakes, of their need to leave work whenever he was in the office. Ms. Clemons acknowledged this and yet she failed to comply with this known policy on November 15, 2017. Although she testified she left because she had a headache and reported her leaving to the assistant manager, it can be reasonably inferred that she left because she was upset that she had to re-create a letter she believed was partially deleted by another employee. Ms. Clemon's leaving after being told to simply retype the letter, which she didn't do, coupled with her failure to report her leaving to Mr. Hakes, can be reasonably construed as acts of insubordination. It was not wholly unreasonable for the Employer to place the Claimant on suspension as a result of this behavior.

Although the Employer did not ultimately intend to terminate her employment on November 16th, 2017, her continued insubordinate behavior at refusing to sign the acknowledgement of the Employer's performance expectations raised in the November 28th meeting sealed her fate. Ms. Clemons wasn't required to agree with the contents of that letter in order to sign it. She admitted that the Employer warned her that if she failed to sign it, he would have no choice but to terminate her employment. The court in *Green v. Employment Appeal Board*, 299 N.W.2d 651 (Iowa 1980) held that a Claimant's refusal to sign a written warning after being told that signing was merely an acknowledgement of receipt and not an agreement of its contents was misconduct if the Claimant failed to sign. Based on this record, the Employer satisfied their burden of proof .

DECISION:

The administrative law judge's decision dated January 31, 2018 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was

warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information

submitted by the Employer was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv