

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

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**MICHAEL L BEALS**

Claimant

and

**CASEY'S MARKETING COMPANY**

Employer

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**HEARING NUMBER: 18BUI-09789**

**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**

**DECISION**

**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, 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:**

The Claimant, Michael, worked for Casey's Marketing Co. at this particular location sometime around the end of 2017 or the beginning of 2018 through July 9, 2018 as a part-time car wash attendant, working 1:00 p.m. until 9:00 p.m. shift.

On June 14, 2018, the Claimant received a written warning for failing to complete all duties on the check list at the end of his shift. At approximately 6:16 p.m. on June 18, 2018, a repeat customer saw the Claimant sleeping in the back room and physically shook him awake. The customer reported this incident to the Employer who viewed it on surveillance video. The Employer subsequently issued a written warning to the Claimant on June 21, 2018. The Claimant explained he was diabetic and has been placed on new meds that caused him to be tired; but the Claimant never provided any medical documentation.

On July 5, 2018, two service techs observed the Claimant sitting on a curb outside the car wash for four hours. As the Claimant sat there, a new car wash employee ushered several vehicles into the car wash. Both parties, as well as several customers, reported the matter to the Employer. The Employer subsequently terminated the Claimant on July 9, 2018 after reviewing the surveillance recordings.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2017) 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 provided credible testimony that the Claimant repeatedly failed to fulfill his duties as a car wash attendant. The Claimant did not dispute the first warning. As for the second warning, the Claimant's argument that his diabetes medication caused him to sleep is uncorroborated. The court in *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309 (Iowa 1986) held that while sleeping on the job can be misconduct, it is the agency's responsibility to determine as a fact whether the conduct was a willful and wanton disregard of the employer's interests. The Claimant never produced any documentation to the Employer or at the hearing to substantiate this allegation. Even with receiving the second warning, the Claimant still failed to provide any documentation so as to mitigate this infraction. It is not wholly unreasonable for us to presume the Claimant was simply tired and fell asleep at work, which is a "...violation or disregard of standards of behavior which the employer has the right to expect of employees..." and therefore, misconduct. See, 871 IAC 24.32(1)"a", *supra*.

Lastly, the Employer had, at least, three witnesses who observed the Claimant's sitting on the curb for several hours. The Claimant refuted this testimony citing the video camera surveillance does not entirely cover the area to which he was sitting. However, the Employer's testimony outweighs the Claimant's denial of this final incident. Based on this record, we conclude the Employer satisfied its burden of proof.

#### **DECISION:**

The administrative law judge's decision dated October 10, 2018 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits 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".

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Kim D. Schmett

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James M. Strohman

#### **DISSENTING OPINION OF ASHLEY R. KOOPMANS:**

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

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