BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov

ANTOINE T YARBROUGH

Claimant

and

DANLEE CORP

Employer

APPEAL NUMBER: 22B-UI-12287
ALJ HEARING NUMBER: 22A-UI-12287

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, Antoine Yarbrough, worked for Danlee Corp. from August 2, 2021 through April 8, 2022 as third shift (11:00 p.m. to 7:00 a.m.) cashier. His job duties included running a register, stocking the cooler, cleaning the store, "doing" the ice bags, and cleaning the parking lot. The Employer experienced issues with the Claimant spending much of the night in the parking lot as opposed to performing his indoor duties. During the first week of April 2022, the Claimant oftentimes left his female coworker alone in the store while he went outside to smoke and sweep the parking lot. Georgia Bailey, the manager, warned him against leaving his coworker alone while he worked outside as it was dangerous that time of night.

The Claimant routinely failed to complete his job duties. When the Employer confronted him about her concerns, he became disrespectful and blamed the prior shift. On one occasion, he indicated he had stocked the cooler, but the Employer found the cooler significantly less than full. The Claimant was also upset that the Employer terminated a couple of his friends the week before. The Employer intended to move the Claimant to a different shift since he no longer wanted to work the cash register because he feared if there was a problem, he would be held responsible. This other position was only part-time since the Employer had no need for a full-time stocker. The Employer required him to finish out that week before moving into the new position.

After midnight on April 7th, the Claimant left his coworker alone, again. Ms. Bailey reiterated her warning against such behavior, as leaving only one person inside was unsafe as well as working outside at that time was unsafe. During the Claimant's shift the following night, someone entered the store and stole the Zippo display off the register counter while the Claimant was sweeping in the parking lot. His coworker, who was alone at the counter, did not see the theft. When Ms. Bailey came to the store the following morning, she became upset at seeing the display had been stolen. She told the Claimant that had he been inside the store, the incident would not have happened. The Claimant retorted that he would simply not go outside to stock the cooler since it would be unsafe for the coworker to be left alone. Frustrated with the Claimant for leaving his coworker alone after repeated warnings, and refusing to perform an additional job duty, the Employer terminated the Claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2022) 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.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The Board must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985). Good faith under this standard is not determined by the Petitioner's subjective understanding. Good faith is measured by an objective standard of reasonableness. "The key question is what a reasonable person would have believed under the circumstances." Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330, 337 (Iowa 1988); accord O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause).

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 record establishes the Employer had ongoing issues with the Claimant's failure to complete his job responsibilities. When confronted, the Claimant often became argumentative, blamed others, and in one instance, refused to continue working the cash register for fear of being blamed for cash shortages. We find the Claimant's behavior to be insubordinate.

The Employer gave numerous verbal warnings to the Claimant for disregarding her directive not to leave a coworker alone in the store at night. We find the Employer's directive was reasonable and justified given third shift can be potentially dangerous, especially when the Employer is short-staffed. All sorts of misdeeds have been known to occur under cover of night, and the Employer merely sought to ensure her employees' safety, as well as mitigate any potential liability. The fact that a theft occurred while the Claimant was outside was not wholly unforeseeable. The Claimant had no good faith reason to be outside given his prior verbal warnings to remain indoors when working with only one other employee. The Claimant's repeated failure to comply with the Employer's directive was "…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…" See, 871 IAC 24.32(1)(a), *supra.*

The Claimant's response to the Employer on April 8th after being reprimanded for leaving his coworker alone, was not only retaliatory, but another act of insubordination. He had already refused to work the register, now he was refusing to stock the cooler because it would be unsafe for his coworker. These refusals, coupled with the Claimant's repeated failures to refrain from leaving his coworker alone, and working outside during the night constituted misconduct by its legal definition. The Employer was not wholly unjustified in terminating the Claimant based on his continued disregard for the Employer's interests. Based on this record, we conclude the Employer satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated September 12, 2022 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".

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 Employer was not presented at hearing. Accordingly none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

AMG/fnv