

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

MARISSA M ROWEN	:	
	:	HEARING NUMBER: 21B-UI-01470
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
PACKERS SANITATION SVCS INC	:	
	:	
Employer	:	

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, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant 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, Marissa Rowen, worked for Packers Sanitation Services from June 21, 2016 until October 19, 2020 as a full-time office coordinator. The Claimant's immediate supervisor was Andrea Ramirez, who had been gone for a year. Ms. Ramirez returned to work sometime in March or April of 2020. The Claimant had immediate concerns about how her supervisor treated her (see, Claimant's Exhibits 4 & 5); she felt harassed, singled out and targeted for criticism. She texted the Employer's hotline to complain, but got no response.

Ms. Ramirez issued write-ups to the Claimant for incorrectly punching in and out during the month of May 2020. She received a verbal warning on May 18th for not clocking in at the start of her shift. Two days later, she did not clock in and out for lunch, twice, for which she was subsequently suspended for one week (May 21-May 28). However, upon further investigation, the suspension was lifted.

On October 6, 2020, the Claimant became upset when her supervisor moved items from her area into an area the Claimant shared with Paulina Navarrete, her office mate and personal friend, who also believed the Claimant was being singled out. (Claimant's Exhibit 6) Once the supervisor left the area, Ms. Rowen returned the items back to their original place. When Ms. Ramirez returned, she got angry with the Claimant, i.e., yelling and screaming at her. Ms. Rowen filed a 3-page complaint (Claimant's Exhibits 3-5) with Human Resources as well as to two other managers who were her supervisor's superiors. When the Claimant got no response to her complaint by the following day, the Claimant got upset and went to her car for an hour without clocking out. She had no intention to quit, she was merely stressed out about the situation and was trying to calm down.

The Employer suspended Ms. Rowen the next day (October 8, 2020), and initiated an investigation into the Claimant's allegations against Ms. Ramirez. Human Resources interviewed the Claimant on October 14th questioning the circumstances that gave rise to her written complaints; she was also questioned about walking off the job without clocking out on October 7th. Ms. Rowen figured Paulina must have told the Employer about her walking off and got upset. She immediately texted her, assuming Paulina had spoken to corporate about her leaving the office on the 7th; Ms. Rowen called Paulina a 'snitch.' (Employer's Exhibit 1-6, unnumbered pp. 11 & 13)

Marco Villa, the Site Manager, called the Claimant into a meeting October 19, 2020 and told her she was being terminated for violating the Employer's policy against retaliation and harassment toward her co-worker, Paulina Navarrete. (Employer's Exhibits 1 & 2) The termination letter, however, did not specify the reason for the termination. There were no verbal or written warnings issued about any prior similar violation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2019) 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 Claimant's version of events. The Employer points out the Claimant received several warnings about her failure to properly clock in and out on several occasions; one of which was dismissed. Yet, the Employer admits the Claimant was not terminated over those infractions, which is corroborated by the fact the record lacks any documentation to support these allegations influenced their decision to sever their employment relationship.

The only stated reason for the Claimant's termination was the text she sent to Paulina that the Employer perceived as a policy violation. However, on review, it is clear the Claimant was merely 'calling out' her friend for telling corporate about her momentary escape to calm down over her ordeal with Andrea and dismay at the Employer's lack of response to her complaints. There is nothing in this text, coupled with the Claimant's testimony, to show she was retaliating or harassing Paulina. The Employer failed to produce either Paulina as a firsthand witness to corroborate any of the Employer's allegations, or Mr. Villa who actually did the termination, but failed to state the reason why she was being terminated. The record is void of any prior warnings for such behavior in the past. At worst, this was an isolated instance of poor judgement that didn't rise to the legal definition of misconduct. Based on this record, we conclude the Employer has failed to satisfy its burden of proof.

DECISION:

The administrative law judge's decision dated March 1, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

AMG/fnv