

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

REBEKAH TRASTER

Claimant

and

SLB OF IOWA LC

Employer

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HEARING NUMBER: 22B-UI-24248

**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, 24.32-1A

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 finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Rebekah Traster, worked for SLB of Iowa, LC (Panera's) from October 7, 2020 through September 24, 2021 as a full-time associate. The Employer has numerous policies, one of which specifically sets forth the following:

No Jerks!

We treat everyone with dignity and respect - our customers and vendors, as well as each other. We treat each other and the customers as we would like to be treated. We respect each other, work as a team, and help each other out. We hope you will make great friends while working at Panera Bread.

The Claimant signed in acknowledgement of receipt the Employer's handbook containing its policies, i.e., harassment, sexual harassment, discrimination, including "No Jerks, at the time of hire. The Employer issued a written warning on September 22, 2021 to the Claimant for cash handling and violating the Employer's tip policy. That same day, the Claimant singled out the co-worker, Tom Penisten, who reported her tip violation and remarked that he was, "crying [or] acting like a little b*tch," several times directly to him and within earshot of several other employees. Penisten reported the matter to Human Resources for which the Claimant was notified that an investigation was being initiated. The Employer interviewed several employees who admitted overhearing her remarks to Penisten. The Claimant denied making the remarks. The Employer determined the Claimant's behavior created a hostile work environment and violated several of its policies. On September 24, 2021, the Claimant was terminated for violating the Employer's 'No Jerks' policy and creating a hostile work environment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2021) 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.

Although the Claimant denied receiving a personnel handbook, she testified that she did 'peruse' it and signed an acknowledgement of reading the Employer's policies. Thus, we find the Claimant had knowledge of the Employer's expectations of behavior in the workplace. The Claimant had already been written up for violating the tip policy, and obviously got upset at Penisten for reporting her. Her reaction escalated the matter, which was not in keeping with the Employer's expectation that she treat everyone in the workplace, i.e., co-workers, customers and vendors, alike, with dignity and respect. To use such derogatory language directed at a co-worker, and in the presence of fellow employees, most certainly created an uncomfortable, and hostile work environment. The Claimant's behavior went against the Employer's interests, as it did not engender the type of atmosphere any reasonable person would expect in such an establishment. Based on this record, we conclude the Employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated February 18, 2022 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".

James M. Strohman

Ashley R. Koopmans

Myron R. Linn