

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

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ROBERT C MEIER

Claimant,

and

INTERSTATE MANAGEMENT CO LLC

Employer.

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HEARING NUMBER: 09B-UI-02875

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 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. A majority of 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, Robert C. Meier, worked for Interstate Management Co., LLC from February 9, 2008 through December 31, 2008 as a full-time night auditor/front desk clerk. (Tr. 2-3, 6-7) The company has a policy that prohibits employees from being away from their assigned work area and unauthorized usage of a guest room. (Tr. 4) The manager under the previous hotel owner, however, allowed the claimant to occasionally "... prop the door open with a luggage rack and turn the TV set and watch..." the weather news. (Tr. 7-8, 9) He wanted to monitor the winter weather, yet be able to keep track of any customers that came to the front desk. (Tr. 9)

On December 27, 2008, the claimant was in the guest room (#102) that was next to the front desk

watching the weather channel regarding the ice storm. (Tr. 3, 5, 9) He did not have permission from the

current manager with whom this subject never arose. (Tr. 4, 8, 10) The following day, the executive housekeeper discovered room #102 had been used. She noted that two chairs had been pushed together; the TV remote was on the bed, which looked, itself, like it had been laid upon. (Tr. 5) There was also dirty tissue in the trash can. The room required re-cleaning.

When Mr. Meier reported to work on December 31<sup>st</sup>, he was terminated. He never received any prior warnings or discipline. (Tr. 5)

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2007) 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 record establishes that even though the company had a policy regarding the claimant's action on November 27th, it was common practice under the previous management to allow front desk employees to watch the weather channel from the hall. Mr. Meier admitted being actually in the room at the time (instead of in the hall), but he denied that he disturbed the room to the extent described by the employer. The fact remains that the room was considered used, and the claimant's behavior was ultimately inappropriate.

While we don't condone Mr. Meier's behavior, we find it difficult to hold him fully culpable of any wrongdoing. After all, he provided a cogent reason for why he was watching TV, i.e., he had to travel 17 miles to get home and wanted to keep abreast of the best route to take in inclement weather. There is nothing in this record to establish that the claimant was ever on notice that his job was in jeopardy if he continued what was once an acceptable practice. At worst, this was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. See, Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989), which is an analogous case where the court held that a single instance of unexcused absence is not misconduct where there are no prior problems with attendance. The employer admitted Mr. Meier had never been disciplined for any infraction during his employment history with Interstate. (Tr. 5) For these reasons, we conclude that the employer failed to satisfy their burden of proof.

#### DECISION:

The administrative law judge's decision dated March 19, 2009 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv

#### DISSENTING OPINION OF MONIQUE F. KUESTER:

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

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Monique F. Kuester

AMG/fnv