

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

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**ABDOU RAZAC IBRAHIM**

Claimant

and

**IAC IOWA CITY LLC**

Employer

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**HEARING NUMBER: 16B-UI-07959**

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

**FINDINGS OF FACT:**

The Claimant, Abdou Razac Ibrahim, worked for IAC Iowa City, LLC, from March 21, 2014 through June 29, 2016 as a full-time service employee. (20:32-21:42)

On September 13, 2015, the Employer issued a written verbal warning to the Claimant for taking an unauthorized break when he went out to his car. (26:27-26:37; 27:08-28:02; 37:00-37:36; 57:25-59: 00; Exhibit E3) The Employer also warned Mr. Ibrahim that should he take another unauthorized break, his job would be in jeopardy. (26:20-26:47; 27:56-28:12; 1:09:31; 1:12:29-1:12:44)

The Claimant was scheduled to work overtime on the evenings of June 22<sup>nd</sup> and June 23<sup>rd</sup>. (22:18-25; 24:13; 25:36-26:13; 55:13-57:00) On the 23<sup>rd</sup>, a couple of employees reported that Mr. Ibrahim was not around on either the 22<sup>nd</sup> or the 23<sup>rd</sup>. (43:20- 43:36; 45:20-45:26) The Employer had no record that the

Claimant ever reported to work, which prompted the Employer look for Mr. Ibrahim for approximately two hours. (22:32-22:38; 24:48-24:50; 29:12-29:55; 30:20-30:37; 45:35-45:44) When the Claimant could not be found, the Employer observed several hours of video surveillance recordings to determine when the Claimant came in, when he left, and when he returned to the facility on both dates. (30:43-31:00; 34:00-34:25; 34:57-35:14) The Employer observed Mr. Ibrahim leaving during his shift both nights and not returning until sometime later in the evening. (30:53-31:031)

On June 24<sup>th</sup>, Ron Udel (Human Resources Manager) was notified about the prior nights' incidents. (41:17-41:41) The Employer investigated the matter and confronted the Claimant about his whereabouts to which he told the Employer that 'he didn't know'. (31:13-31:35) The Employer terminated Mr. Ibrahim for leaving work without prior authorization. (1:16:21-1:16:29)

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

Iowa Code Section 96.5(2)(a) (2013) 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. Based on the Employer's testimony, and the fact that the Claimant had been issued a written warning for leaving the facility during his shift without authorization, we can reasonably conclude that Mr. Ibrahim had full knowledge of the Employer's policy and expectations regarding his leaving the facility on both June 22<sup>nd</sup> and 23<sup>rd</sup>. (37:35-35:57; Exhibit E3) In addition, the Employer had forewarned him that should he leave without authorization in the future, he could lose his employment. The Claimant is somewhat equivocal in his denial of leaving the facility on the night in question; rather, he focuses on primarily on his having performed his duties well on those nights. (1:03:48-1:05:06) Based on this record, we find it more probable than not that Mr. Ibrahim left the job site for a significant period of time on both nights in which the Employer was not able to locate him, which is corroborated by the video surveillance recordings. For this reason, we conclude that the Employer has satisfied its burden of proof.

#### **DECISION:**

The administrative law judge's decision dated August 16, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, the Claimant 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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Ashley R. Koopmans

AMG/fnv

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James M. Strohman