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

LAMONT F JEFFRIES Claimant and **PRK WILLIAMS INC** Employer	:	**HEARING NUMBER:** 19BUI-02739 **EMPLOYMENT APPEAL BOARD** **DECISION NUNC PRO TUNC**

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, 96.3-7

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, Lamont F. Jeffries, worked for PRK Williams, Inc. from January 03, 2018 through January 18, 2019 as a full-time Human Services supervisor. He signed for receipt of the Employer's policies and job description on January 30, 21, and September 11, 2018. The Claimant's position involved working with adults having developmental and mental health disabilities (hereinafter referred to as 'member'). In his capacity, the Claimant is charged with looking out for the safety and well-being of the members.

Toward the beginning of November 2018, a member was given the incorrect dosage of medicine. The Claimant contacted the staff person who administered the incorrect dosage and reported the incident. He then left the incorrectly medicated member unattended while he took another member to the latter's doctor appointment. The Employer issued Mr. Jeffries a written warning on November 7, 2018 and placed him on a 30-day probationary period for failing to use good judgement when he left the member unattended, and failed to seek immediate medical attention when that same member experienced a reaction to the medication. The Claimant's 30-day probation expired on December 6, 2018.

In the meantime, the Employer issued the Claimant another written warning on November 22, 2018 for leaving another member unattended. Mr. Jeffries was demoted from supervisor to direct support professional; he was also warned that further infractions could result in his termination.

A member subsequently reported the Claimant was involved in horseplay with another member whom he pushed into a door with enough force to break the door. During that interchange, the Claimant used disparaging comments towards the 'pushed' member, i.e., repeatedly calling him 'punk ass'. The Claimant never reported the incident, nor did he submit a maintenance request to fix the door. With this, the Employer terminated the Claimant for violation of the Code of Conduct Policy and Procedure, treating members with dignity and respect.

The Claimant filed for unemployment insurance benefits with an effective date of February 17, 2019. He received no unemployment insurance benefits after his separation from employment. The employer provided the name and number of Lori Bryant as the person who would participate in the fact-finding interview on March 12, 2019. The fact finder called Ms. Bryant but she was not available. The fact finder disconnected after being left on hold for over three minutes. The fact finder sent the Employer a letter asking for a response by March 18, 2019. The Employer made no response, as the Employer did not respond to the letter; nor did the Employer provide any documents for the fact finding interview.

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 record establishes the Claimant received two warnings for leaving members unattended. The first such incident was further exacerbated by the fact the member also experienced a medication reaction the Claimant also failed to properly report. His final warning put him on notice that his job was in jeopardy should he commit any further infractions. Once he was demoted, the Claimant should have known that inappropriate name-calling of a member in addition to causing property damage in the midst of a scuffle, playful or not, was against the Employer's policy. We can reasonably assume the Claimant was very aware of this, as he failed to report the matter at all.

As supervisor over adults with developmental disabilities, it is incumbent upon the Claimant to be vigilant in carrying out his responsibilities in order to avoid harm to the members, and potential liability to the Employer. Here, the Claimant demonstrated a pattern of "…carelessness or negligence of such degree of recurrence as to manifest equal culpability... or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." See, 871 IAC 24.32(1)"a", supra. The Claimant was not available to refute any of the Employer's testimony. Based on this record, we conclude the Employer satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated April 22, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, he is denied 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".

The 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 the Employer was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

Because the Claimant has received two consecutive agency decisions that allowed benefits, the

Claimant is now subject to the double affirmance rule.

Iowa Code section 96.6(2) (2007) provides, in pertinent part:

> …If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision in finally

> reversed, no employer's account shall be charged with benefits so paid and this relief from charge shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5…

871 IAC 23.43(3) provides:

> Rule of two affirmances.
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> a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.
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> b. However, if the decision is subsequently reversed by higher authority:
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> (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
> (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
> (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

In other words, as to the Claimant, even though this decision disqualifies the Claimant for receiving benefits, those benefits already received shall ***not*** result in an overpayment.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv