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questions or concerns to other foremen in the adjacent building or across the road, i.e., Dale Snow, Mark Borenson, and Jeff McAllister, in the interim. (13:14-13:34; 16:28-16:53; 21:56-22:06; 36:47-37:23) It was not uncommon for a particular building not to have a foreman present (16:57-17:01); however, the Employer's policy requires two people to always be in the same building for safety reasons. (14:13-14:27) The Employer also has a policy that prohibits "...unauthorized leave from the work area during work schedule exceeding the time allowed for schedule break or lunch period." (9:18-9:24; 15:50-16:00; Employer's Exhibit 2, numbered p. 36)

On May 15, 2017, Mr. Gruber and co-workers Chris Dreyer, Mike Klennert, and Jessica O'Brien worked the same shift. The Employer had truck bed orders scheduled along with other work orders available for the Claimant's (and others) continued work throughout his shift. (14:38-15:10) When the Claimant reached a point where he had questions, he sought out Dale Snow who was not available at the time. (32:16-32:22) Since the Claimant had a graduation to prepare for, and was at a standstill for work, he began discussing with Dreyer and O'Brien how there were no supervisors available. He suggested they should leave since no one was available to answer questions. No one discussed trying to contact any supervisors (22:08-22:10) and the Claimant did not contact any managers or foremen prior to leaving the premises. (16:15-16:19) All three employees left without permission from a manager. Klennert, who was a new employee and unfamiliar with the policies, followed their lead. (21:29-21:38; 26:50-27:44)

Around 7:15 that morning, McAllister received a telephone call from Snow (truck shop foreman), stating that no one was in the truck bed building Gruber and his coworkers worked. (10:03-10:26) McAllister began calling the employees to bring them back to work. (27:55-28:10) Both Gruber and Dreyer returned to work that day at which time the Employer questioned them about their leaving early. (11:05-11:12; 22:30-22:56) Dreyer, O'Brien and Klennert indicated Gruber suggested that since no management was around, they shouldn't be working and should leave. (11:40-12:22) At the end of the day, Gruber was discharged for leaving work without permission and enticing other employees to leave work as well.

Klennert was told that he should not have left work that day (28:19-28:26), but he was allowed to remain employed when he returned to work the following day.

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.

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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. The record establishes that the Claimant has a history of disciplinary issues which are well-documented by the Employer's exhibits and testimony. Additionally, the Employer has work policies, one of which provides that, at least, two people must be in the building at all times during work hours; and that employees shall not leave the work premises beyond scheduled work times/breaks without prior authorization. The Claimant did not deny that he had knowledge of these policies.

As for the final incident that led to Gruber's termination, the parties agree that there was a meeting held the previous Thursday in which everyone was directed to talk to certain other foremen should any problems or questions arise in Damjanovic's absence. Although Mr. Gruber testified that the assistant managers he would have normally reported to were not at work on the 15th, he admitted knowing that he was supposed to report to Dale Snow (as one alternative) in Damjanovic's absence pursuant to the Employer's Thursday meeting instructions. His understanding of this chain of command is further corroborated by his admission that he did, initially, try to consult with Snow. (37:24-37:28) Why he didn't think he should attempt to

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contact Snow, again (or any other suggested foreman), to get authorization to close up shop and leave is

beyond reason. Any reasonable person would know an employee cannot simply close up shop without any prior authorization, especially in light of the Employer's company policy. Gruber, was a five-year employee whom we attribute having knowledge of the Employer's policies. And in light of his past disciplinary warnings, he should have known his job could be in jeopardy for leaving without permission prior to the end of his shift. It doesn't matter that the other employees were not terminated. Their retention does not detract from the Claimant's culpability given his lengthier experience with the company and his history of warnings and recent suspension. Based on this record, we conclude that the Employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated June 23, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, he 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".

Kim D. Schmett

James M. Strohman

AMG/fnv