

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

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**DEXEL L HARRIS**

Claimant,

and

**CURLYS FOODS**

Employer.

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**HEARING NUMBER: 14B-UI-10923**

**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. Two 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 affirms the timeliness issue, and **REVERSES** the separation issue as set forth below.

**FINDINGS OF FACT:**

The Claimant, Dexel L. Harris, worked for Curly's Foods from January 17, 2011 through September 5, 2014 as a full-time production supervisor on 2<sup>nd</sup> shift. On September 3, 2014, Mr. Harris directed Juan Tapia, who was previously working on the cryovac line outside the cryovac dept., to work in the pack-off area where they were needed. (38:16-38:47) Tapia resented having to work inside. (40:55; 45:44) Approximately 15-20 minutes later, the Claimant received a radio call from Genny Porrás requesting Harris to report to the north side of the building. (39:34-39:41) When he got there, several supervisors (Perez, Maria Ramirez, Genny Porrás) and Juan Tapia confronted him (40:04-40:11) because Tapia had told them that Mr. Harris had sent nude pictures of Genny Porrás and other employees to several other employees. (26:17-26:27; 28:44; 29:32-30:15; 35:24; 40-18-40:24) When Harris questioned her, Ms. Porrás indicated that she never saw the pictures that the Claimant was accused of sending. (34:06-34:13) The Claimant denied the accusation stating that he never received any such pictures, himself, to send. (40:34-40:36; 43:41-43:50)



Mr. Harris asked Juan Tapia to show him the pictures he was talking about, but Tapia also never showed him any pictures. (41:00-41:06; 45:13-45:21)

Juan Tapia and the supervisors continued to converse with each other in Spanish, which upset the Claimant because he didn't understand what they were saying. Harris finally told Tapia that, "...somebody is going to whoop [your] ass because [you're] always telling lies..." (41:26-41:42; 44:31-44:38) The Claimant never put his hands on anyone and left the conference room. When Ms. Porras came out, she told Harris that he could get in trouble for threatening an employee. (41:39) The Employer terminated him on September 5, 2014, solely, for violating the company's Business Conduct & Ethics Code, i.e., threats of violence. (20:03-20:17; 21:42-21:55; 37:47-38:03)

### **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 Claimant's version of events. The Claimant vehemently denied that he ever received, or sent any nude pictures of employees to employees. The very people who were allegedly received such pictures were unable for some unknown reason to produce these pictures to corroborate Juan Tapia's accusation. This fact significantly diminishes these witnesses' credibility. And while the Claimant was not terminated for allegedly sending nude photos, he was terminated based on the allegation that he threatened an employee over making a false allegation. It is certainly understandable that the Claimant would be frustrated over being accused of such a dastardly deed. However, the record lacks evidence to support that the Claimant, personally, threatened his co-worker, or made any physical contact to back up the alleged threat. Since the witnesses involved are the very same witnesses that we find not credible overall, we conclude that the Employer failed to satisfy their burden of proof. We would also note that the record contains no evidence of any prior disciplines issued to Mr. Harris for any prior work rule violations.

**DECISION:**

The administrative law judge's decision dated November 19, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided he is otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

AMG/fnv

**DATED AND MAILED** \_\_\_\_\_

Copies to:

DEXEL L HARRIS  
2520 JACKSON  
SIOUX CITY IA 51104

CURLYS FOODS  
C/O TALX UCM SVCS INC  
PO BOX 283  
ST LOUIS MO 63166-0283