

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

IZET OBIC

Claimant

and

MASTERBRAND CABINETS INC

Employer

HEARING NUMBER: 20BUI-09318

**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: 96.5-2A

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. 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, Izet Obic, was employed by Masterbrand Cabinets, Inc. May 2, 2005 through October 31, 2019 as a full-time boxer. On January 4, 2018, the Claimant signed in acknowledgement of receipt the Employer's handbook that outlined the Employer's policy, which included "...engaging or threatening to engage in any type of physical altercation with anyone on company premises" may be grounds for immediate termination.

The Claimant was responsible for training new workers for the duties of a boxer. On October 28, 2019, the Claimant experienced problems with a co-worker, Mark Kelley, who'd been provoking him on a daily basis in the aftermath of the Claimant's grief over his mother's death. Kelley would taunt him, calling him a lazy bum. The Claimant complained several times during the week about Kelley's behavior, i.e., his failure to help with the machines; his low productivity; and his constant provocations, but nothing was done.

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On October 31, 2019, the Claimant came upon Kelley who'd sent a new employee to work a machine that was very dangerous to someone with no prior training on it. The Claimant and Kelley began to argue about the matter, as the Claimant had not had a chance to train this new person. Kelley should not have allowed the new guy work on that machine. Kelley used profanity toward the Claimant, then grabbed his own genitalia and told the Claimant to "suck [his] dick." The Claimant responded, "If you do that again, I will punch you in the face." An investigation ensued.

The Claimant had no prior history of such behavior, and had never received any prior warnings for any company violations. Both employees were suspended pending investigation. On November 7, 2019, the Employer terminated the Claimant for violating company policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) 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).

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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 was a long-term (14 ½ years) employee who experienced ongoing harassment from a co-worker, Mark Kelley, during the last weeks of his employment. Although the Claimant attempted to resolve this problem by complaining to management about him, the Employer took no action to alleviate his concerns. Kelley's obscene act and accompanying remark was the final straw after a string of untoward behavior aimed at the Claimant. It was not wholly unreasonable for the Claimant, who was already in a grief-stricken state, to respond as he did toward the belligerent co-worker. While we don't condone the Claimant's behavior, we find that his reactionary comment without any physical follow-up was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. For this reason, we conclude the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated December 26, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv