

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

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**KEARY M HOLM**

Claimant

and

**WITTROCK MOTOR COMPANY**

Employer

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**HEARING NUMBER: 16B-UI-05786**

**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, 24.32-7

**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. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Keary Holm, worked for Wittrock Motor Co., which ended on March 17, 2016, as a full-time collision center technician. (5:30-5:57) The Claimant received two written warnings for company policy violations, which Mr. Holm signed in acknowledgment of receipt. (13:25-13:30; 13:45-13:52; Exhibits 2 & 3) On October 27, 2015, the Claimant was issued the first warning for using demeaning and inappropriate language toward his co-worker within earshot of other employees and customers, who reported this incident. (13:53-14:21) And on January 4, 2016, Mr. Holm was issued the second written warning based on a history of multiple work performance issues for which he had been verbally warned. (14:23-14:50)

The Claimant left work early on around 1:20 p.m. on March 15<sup>th</sup> without explanation, and did not return. (12:24-12:31) The following day, he sent the Employer a text explaining there was an ambulance at his home for his mother who had fallen outside, which accounted for his abrupt departure. (12:35-12:39)

On March 16, 2016, the Claimant rudely interrupted the Employer who was speaking on the phone with a customer as the Claimant loudly demanded more work. (10:26-10:49) As Mr. Holm exited the Employer's office, he slammed the door. (10:50) A couple hours later, he asked the Employer if he had any more work available for him, or else he was going to leave. (10:54-10:57) The Employer assigned him work on a truck. (11:00-11:06) Mr. Holm went back to the Employer, interrupted him again demanding more work, and then abruptly left the area. (11:04-11:14) The Claimant left work two hours early that same day without prior approval. (10:26; 11:14-11:21; 12:06-12:16) When the Employer checked on the last assignment he gave Mr. Holm, the Employer noted that the work was incomplete without any further explanation. (11:25-11:40) The Employer met with the Claimant the next day and terminated him, as his behavior the day before was the 'last straw' in light of his past warnings. (11:48-12:00)

## **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. The Employer provided testimony as well as documentation to support that the Claimant received two prior written warnings about past inappropriate behavior and work performance issues. Although the Claimant argues that he had a gentlemen's agreement to leave if work was not available, there is nothing in the record to substantiate his claim. And assuming arguendo that the Claimant had such an agreement, there was no excuse for the manner in which he interacted with the Employer on March 16<sup>th</sup>. The Claimant's tone was disrespectful and demonstrated a blatant disregard of standards of behavior which the employer has the right to expect of employees. He had already received a written warning for such ill-mannered behavior. (Exhibit 2) As for work performance, the Claimant was already on notice of prior such issues back on January 4<sup>th</sup>. (Exhibit 3) In light of his past warnings, the Employer was justified in severing their employment relationship. Mr. Holm clearly demonstrated insubordinate behavior towards his supervisor on March 16<sup>th</sup> and his leaving the workplace without adequately completing a job and without permission further exacerbated the incident. Based on this record, we conclude that the Employer satisfied their burden of proof.

#### **DECISION:**

The administrative law judge's decision dated June 22, 2016 is **REVERSED**. The Claimant was discharged for disqualifying reasons. 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. Schmelt

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James M. Strohman

**DISSENTING OPINION OF ASHLEY R. KOOPMANS:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the administrative law judge's decision in its entirety.

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Ashley R. Koopmans

AMG/fnv