

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

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**AMEYO HOUNDJAGO**

Claimant,

and

**WEST LIBERTY FOODS LLC**

Employer.

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**HEARING NUMBER: 11B-UI-10041**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**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, 26.8-5**

**D E C I S I O N**

**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 **REVERSES** as set forth below.

**FINDINGS OF FACT:**

A hearing in the above matter was scheduled for August 23<sup>rd</sup> in which the appellant (Claimant) did not participate and the administrative law judge issued a decision on the record (based on Fact-finding Worksheet notes). From those facts, we find that the Claimant, Ameyo Houndjago, worked for West Liberty Foods, LLC from June 21, 2010 through May 20, 2011 as a full-time production laborer.

On May 18<sup>th</sup>, 2011, Ms. Houndjago was accidentally hit in the face with a hose when she left the line. At the end of the hose was attached a knife that was held by a co-worker named Maria. Another co-worker reported that the Claimant pushed Maria. When the employer questioned the Ms. Houndjago, she denied the accusation to which the employer directed her to go home. Two days later, Maria reported that the Claimant pushed her after the hose struck the Claimant's face. The employer called the Claimant back to work and terminated her.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) 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).

Neither party participated in the hearing. Thus, the record contains no sworn testimony about the alleged 'push' that led to the Claimant's termination. As the Cosper court held, the burden of proof is on the employer to show that the Claimant committed work-connected misconduct. Here, the Claimant denied that she touched the co-worker, as she had no reason to retaliate because she understood that the co-worker did not intentionally hit her with the hose. We find the Claimant's testimony credible based on her explanation as to why she demonstrated no retaliatory behavior due to her belief that the act was not intentional. In addition, her statement that she had no inkling why the employer sent her home that

day further corroborates her belief that she committed no wrongdoing.

On the other hand, the employer failed to appear and provide any of the firsthand witnesses at the hearing to refute the Claimant's statements. For this reason, we conclude that the employer failed to satisfy their burden of proof.

871 IAC 24.32(4) provides:

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. *Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification.* If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved. (Emphasis added.)

**DECISION:**

The administrative law judge's decision dated August 24, 2011 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided she is otherwise eligible.

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Monique F. Kuester

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Elizabeth L. Seiser

fnv