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

LORETTA KOKONEN	:	
	:	HEARING NUMBER: 08B-UI-02715
Claimant,	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
WEST LIBERTY FOODS LLC	:	
Employer.		

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

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. 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, Loretta Kokonen, worked for West Liberty Foods, LLC from September 21, 1998 through February 18, 2008 as a full-time security guard. (Tr. 2, 10) The claimant received a security book containing security guidelines (Employer's Exhibit 1) that explained the claimant's functions and responsibilities. (Tr. 5) As a security guard, part of the claimant's responsibility included escorting all visitors, unless preauthorized (Tr. 4), to their desired destinations in the facility. (Tr. 3)

On January 31, 2008, a young man came into the facility indicating that he had an emergency and needed to talk to someone. (Tr. 11) Ms. Kokonen called Human Resources, speaking to Esponsa Galvin (the receptionist) who instructed her to send him back. (Tr. 11-12) The claimant allowed the man who

was an ex-employee to go back without an escort. (Tr. 3, 8) The man had three employees called off the floor to

discuss a personal issue. (Tr. 8) This gathering led to a verbal altercation with one of the employees that resulted in the ex-employee's being removed from the premises. (Tr. 8-9, 11) The employer suspended Ms. Kokonen until February 8, 2008 for allowing the ex-employee into the facility without an escort. (Tr. 3, 10, 14)

Upon her return to work, the employer reiterated the employer's policy with regard to escorting visitors at the facility. (Tr. 9, 14) On February 13, 2008, Dan (the plumber), who had been to the facility several times in the past, came in loaded with tools. (Tr. 3, 14) She asked him where he was supposed to go to which he told her he'd be working on the bathroom. After he signed in, Ms. Kokonen gave him a visitor's badge and told him to "… hang on, [she'd] get a hold of… somebody else [to] take him in…" (Tr. 16) She then proceeded to call HR to get an escort to take him to his destination. (Tr. 15) Before she could get a response from HR, as her headset wasn't working properly (Tr. 15, 17), Dan walked off. She yelled for him, but he had already gone over to HR on his own. (Tr. 15-16, 18) The employer terminated the claimant for allowing another person to enter the facility unescorted.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2007) 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 claimant is a long-term employee having worked approximately ten years with an apparently unblemished work record until the last two months of her employment. According to the record, the employer admits that Ms. Kokonen's discharge was predicated on two incidents in which she failured to properly escort two visitors into the facility. (Tr. 4) Yet, the claimant provides cogent arguments in both instances that would mitigate the claimant's culpability in both incidents.

As to the ex-employee incident, Ms. Kokonen had contacted HR to obtain permission to let the ex-employee into the facility. Although the employer has a policy that specifies who can give prior approval to visitors (COO), according to Ms. Kokonen's testimony, it was common practice for her to call HR and have Esponsa further direct her. (Tr. 12) Thus, it was not wholly unreasonable for the claimant to assume when Esponsa directed her to send the ex-employee back, she had the requisite prior approval based on the alleged emergency circumstances. The employer failed to provide Esponsa as a witness to refute the claimant's testimony in this regard.

As for the final incident, the claimant reasonably complied with the employer's policy:

- she had the plumber sign in;
- provided him with a visitor's badge
- advised him to wait
- she attempted to contact HR to obtain an escort (See, Employer's Exhibit 1)

It was beyond Ms. Kokonen's control that the plumber, a serviceman, who had previously performed services in the facility, and of whom could arguably be considered an exception to the visitor definition (as in telephone repairmen, Canteen machine repair or vending delivery), took it upon himself to bypass the guard station before he could get an escort. The claimant provided unrefuted testimony that she tried to get him to return, but he didn't hear her. Additionally, Ms. Kokonen's failure to secure an escort for the plumber in the first place was due, in part, to faulty equipment which prevented her from making contact with HR. The fact that she told him to 'hang on' is also indicative that she was fully aware of the procedure for visitors, particularly given her recent suspension. To consider this incident misconduct, the employer would have to prove that she blatantly and willfully intended to disregard their previous directive, which the record does not support. For this reason, we conclude that the employer has failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated April 7, 2008 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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John A. Peno

_____
Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

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

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Monique F. Kuester

AMG/fnv