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

MARJAN STOJANOV	:	
	:	**HEARING NUMBER:** 18BUI-03222
Claimant	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
PACKERS SANITATION SVCS INC	:	
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, 95

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. 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, Marjan Stojanov, worked for Packers Sanitation Svcs., Inc. from November 6, 2017 through February 1, 2018 as a full-time laborer. At the start of his employment, the Claimant worked under a manager named Kyle. Sometime at the beginning of January 2018 (22:05), Sorto Ramirez replaced Kyle as the Claimant's manager. One early morning, Mr. Ramirez came upon the Claimant explaining how to use a water hose more efficiently. Ramirez grabbed the hose away from Stojanov and directed him to come into his office. Ramirez was upset because he believed the Claimant was neglecting his own duties. Ramirez took away the Claimant's 'red helmet', which signified a leadership position, and replaced it with a white helmet, which signified a subordinate position. (21:20-22:05; 23:32- 23:52) This upset the Claimant because he had not yet received the pay increase as a red helmet while under prior management for which he had already filed a complaint back in December of 2017. (26:22-27:39)

About a week later, Ramirez requested a meeting over break with Stojanov to smoke cigarettes and discuss Ramirez's decision to return Stojanov to red helmet status as he needed him to train incoming new employees the following week. (30:17-31:52) Around Tuesday, February 6, 2018, as the Claimant worked with the new employees, Ramirez angrily accused the Claimant of leaving meat on the line, which was unsanitary. (36:45) The Claimant believed this was a false accusation, but did not argue with Ramirez. (32:56-34:16) Instead, he apologized and explained that he needed more water pressure and was unable to correct the problem, alone, without follow-up team work.

While everyone changed out of work clothes in the locker room the following day, Ramirez ordered everybody over to the dock. (37:27) The Employer's tone concerned Stojanov who decided to record this impromptu meeting. (37:47-38:00) As the employees stood outside Ramirez' office listening to his comments, the Claimant expressed his concerns as well. (56:00-1:05:07) At some point during this interchange, the production manager from a client company, whose office was in the vicinity, interjected that he had people coming in and that he didn't need the commotion.

Ramirez subsequently presented the Claimant with a termination document for his signature. The document contained no explanation as to why the Claimant was being terminated; only blank spaces at each category identified as 1st warning, 2nd warning, 3rd warning, etc. When the Claimant asked Mr. Ramirez why he was being terminated, the latter only inquired as to whether Stojanov intended to sign the document or talk to corporate office. (19:30-21:19) The Employer refused to tell the Claimant why he was being terminated. The Claimant had never received any prior warnings for any work rule infraction during his employment.

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:
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> 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 record is void of any evidence to support the Claimant had any prior issues throughout his employment. It appears that once the new manager, Ramirez, came on board in January of 2018, the Claimant was abruptly demoted to a lesser status for what the Employer subjectively believed was the Claimant's failure to fulfill his job responsibilities. With this first incident, the Claimant was told to stop rendering assistance to his subordinates, which he complied. And assuming arguendo the Claimant was negligent in his duties, this would have been a first time offense for which the Employer didn't issue any type of warning. Instead, Stojanov was immediately 'demoted' for what we reasonably deduce was part of his responsibility as a 'red helmet' lead worker to correct or improve a given task of his subordinates. The Employer clearly acknowledged the Claimant's ability and value as a leader based on their cigarette break conversation a week later in which Ramirez voiced his intention to return Stojanov to 'red helmet' status. The Employer does not deny this.

The final incident was the result of the Employer, again, accusing the Claimant of failing to perform his job duties. When the Claimant tried to explain that he, alone, couldn't fix the problem, their ensuing debate led to the Claimant's termination. The Employer refused to specify what work rule, if any, the Claimant failed to comply with. When the Claimant pressed for a reason, the Employer refused. At worst, we conclude this was an isolated instance of poor judgement that didn't rise to the legal definition of misconduct. The Employer didn't satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated May 24, 2018 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.

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Kim D. Schmett

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