

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

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**MASSAH M LAHAI**

Claimant,

and

**CARE INITIATIVES**

Employer.

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**HEARING NUMBER: 10B-UI-08468**

**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: 96.5-1**

**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 majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Massah Lahai (Claimant) was employed as a full-time CNA for Care Initiatives (Employer) from September 14, 2009 until she was fired on April 27, 2010. (Tran at p. 2; p. 11; Ex. 1). The Claimant worked from 10:00 p.m. to 7:00 a.m. (Tran at p. 2; p. 11).

On April 27, 2010, several people called-in to report off for the first shift. (Tran at p. 2). After the Employer asked for volunteers to stay and did not receive any, it drew names from a hat and the Claimant's name was selected. (Tran at p. 2-3; p. 5). The Claimant had never been asked to stay over in the past. (Tran at p. 11-12). She had no prior warnings. (Tran at p. 4).

The Claimant had a three-year old daughter and three school age children. (Tran at p. 11). At 8:00 am she told her supervisor that she could not work the second shift. (Tran at p. 3). Her husband is out of town. (Tran at p. 15). The supervisor asked her to stay until 10:00 am. (Tran at p. 3). The Claimant was unable to because she had to get her children to school, and she had no one to help her. (Tran at p. 11-14). The Employer offered to let the Claimant drop off her children and then return to work. (Tran at p. 19; p. 25; p. 27). The Claimant could not do this since she needed to be at home to care for her three-year old. (Tran at p. 15; p. 19; p. 27). The Claimant told the Employer this. (Tran at p. 19). As the Claimant understood it, she was eventually allowed just to go home. (Tran at p. 13-14; p. 18-19).

On April 28, 2010, the Employer terminated the Claimant for the stated reason of walking off the job. (Tran at p. 2; p. 4; p. 7; p. 16 Ex 1).

## **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.

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

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).

More specifically, continued failure to follow reasonable instructions constitutes misconduct. *See Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *See Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The Board must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. *See Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985); *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Good faith is measured by an objective standard of reasonableness. "The key question is what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); *accord O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

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 have found credible the Claimant's testimony that she had a three-year old to care for, that she told her supervisor this, and that she thought she had been approved to go home. There remains, then, only whether the Claimant's refusal to stay past 8:00 am was insubordination under the circumstances. We find that it was not.

In insubordination cases such as this we balance the employer's interests against the good faith reasons, if any, a claimant may have for refusing to comply with an order. We do recognize that the Employer in this case has a strong interest in insuring that its resident's are adequately cared for. But the Claimant has a parallel interest in caring for her own young daughter. Moreover, the Claimant was given short notice and had not previously faced this choice. The case is somewhat similar to *Pierce v. Iowa Dept. of Job Service*, 425 N.W.2d 679 (Iowa App. 1988) where an employer gave short notice of overtime. Like the claimant in *Pierce* this Claimant had no realistic opportunity to make other arrangements. Also in both instances, the employee had not had to face the situation before, and thus had no reason to have made previous arrangements. Based on this analysis alone we would find no misconduct proven.

Finally, we do think the Claimant, a native of Africa, was genuinely confused when she left. She thought that the Employer had relented and allowed her to go home without risk of losing her job. This was incorrect, but it was a good faith error. Independent of our prior analysis, we would find that based on this good faith error the Claimant's action on her final day were not willful. She did not *intentionally* disobey and thus did not commit misconduct.

**DECISION:**

The administrative law judge's decision dated August 17, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

**DISSENTING OPINION OF MONIQUE 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 Kuester

RRA/kk