

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

ROSETTA WILLIS

Claimant

and

MIDWEST JANITORIAL SERVICE INC

Employer

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HEARING NUMBER: 21B-UI-13957

**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, 96.5-1

DECISION

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, 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, Rosetta Willis, worked for Midwest Janitorial Service as a full-time custodian from December 23, 2019 until January 15, 2020 under the direct supervision of Darrell. During the Claimant's assignment in early January after employees returned from holiday break, the Claimant experienced problems with male employees coming in and out of the restroom while she was cleaning. She also experienced incidents in which someone left soiled toilet paper on the floor. She spoke to Darrell, as well as his supervisor, about these issues, which triggered the Client to investigate the matter. The Client reported to the Employer that their video surveillance did not corroborate the Claimant's statements. Because of this, the Client terminated the Claimant for providing false information to security. The Claimant did not know why her assignment ended.

On January 14, 2021, the Claimant received a call from her Mother informing her she was very sick and could no longer watch her son. The Claimant tried to contact her supervisor, Darrell, before she left, but he didn't answer. She left a message about the situation and later that evening she tried to call him again. When he didn't answer, she left a text telling him she wouldn't be in because she had no one to watch her son. Several hours later, Darrell contacted her and indicated he would find someone to cover her shift. The Claimant texted Darrell the next day to inform him her son was now ill and she wouldn't be in the following day (16th). She heard no response.

On January 15, 2020, the Employer via Darrell or Don believed it was in the Employer's best interest to discharge the Claimant based on dishonesty with the Client and for leaving her assignment on January 14, 2021. The Notice of Termination was sent accompanying the Claimant's last paycheck. The Employer had never issued any prior verbal or written warnings to the Claimant during her employment. The Claimant never had an opportunity to respond to the discharge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2019) 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 Claimant's version of events. Firstly, the Claimant vehemently denies she left her assignment over restroom

traffic or the ‘incidents,’ she previously complained about. We find it credible she left simply because her Mother was ill and could no longer care for her son, which created an emergency situation for the Claimant.

The record establishes she took appropriate and reasonable measures to notify her immediate supervisor, who was fully apprised of the situation by that same evening.

Secondly, the Employer failed to provide any firsthand witnesses or evidence to the incident that led to the termination, i.e., video footage, Client supervisor, or the Claimant’s supervisor. The Employer also failed to provide the alleged statement it received from the Claimant indicating she left because of her concerns about restroom traffic. Additionally, there is nothing in the record denoting the actual dates or times the video surveillance covered, were the same time frames complained of by the Claimant to prove she was being dishonest. Both parties agree the Claimant never received any verbal or written warnings during her employment for any infraction. Given the record before us, we conclude the Employer has failed to satisfy its burden of proof.

DECISION:

The administrative law judge’s decision dated January 25, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

James M. Strohman

Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

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

Myron R. Linn

AMG/sh