

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

---

**JEFFREY R PIERCE**

Claimant

and

**HUBER HAULING INC**

Employer

**HEARING NUMBER: 17BUI-08163**

**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:** 96.5-2A

**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. 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, Jeffrey R. Pierce, worked for Huber Hauling, Inc. from May 16, 2017 through July 17, 2017 as a full-time truck driver. At the start of his employment, the Employer provided the Claimant with its written policies and rules for reporting accidents and emergency situations while at work. The Employer also provided instructional training. Should an employee hit a powerline, the employee is to stay in the vehicle and contact the Employer.

While Pierce was unloading rock in Jasper County on July 15, 2017 (Saturday), he accidentally struck down a powerline when he lowered the truck's box. The Claimant immediately called Darcy Knowles, the Operations Manager for Huber Hauling to report the incident, but there was no answer. (29:22) The Claimant then contacted his neighbor who was a farmer to inform him of the situation and ask for assistance because he knew from being an ex-farmer that the cattle on the property with the downed powerline couldn't go without water in the heat for long. Mr. Pierce, again, tried to contact Mr. Knowles to no avail. The area was safe and secure; the Claimant then left the area and returned to the office to deliver the truck. The Claimant did not see Chance Chesnut, the Operations Manager for Huber Grading, while he was at the office. (31:46; 33:17)



After he left work, Pierce returned to the farm as a 'good neighbor' to assist the property owner's son with repair of the powerline, which was not uncommon for farmers to do in that situation. Neither man was licensed to fix powerlines. The Claimant reported the incident the following Monday at the end of the day. The Employer terminated him for failing to report the accident at the time it happened in violation of company policy.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2017) 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 Employer acknowledged that the Claimant called him early Saturday afternoon, but for whatever reason, he did not take the call when it came. Although Pierce did not leave a message, we find his testimony credible that he was trying to report the accident involving the downed powerline soon after it happened. He attempted to comply with the Employer's reporting policy a second time without success. The Claimant provided a plausible explanation for why he left the site and returned on his own time to help the farmer's son remedy the situation and avoid the consequences of how a lack of electricity could harm the farmer's cattle. While we disagree with how the Claimant handled the potentially harmful situation, we acknowledge that he acted in good faith to fix a problem he was responsible for creating by minimizing any further damage with the consent of the property owner's son.

As for the Employer's argument, he could have reported to another member of management (Chesnut) who was available at the shop, however Chesnut admitted he didn't know if Pierce saw him when Pierce returned to the shop. Both men left about the same time heading in different directions. (18:40) Given Chesnut's testimony and the Claimant's denial he ever saw Chesnut, we find it more probable than not, the Claimant was unaware of his presence and had a viable excuse for why he said nothing to him about the accident. Although it was in both parties' best interests to contact the Employer according to company policy, we find that the Claimant made two attempts to contact the Employer without success soon after the accident happened. His delay to fully disclose the incident until the following workday was not for any malicious or intentionally disregarding reason. At worst, we view the Claimant's behavior to be an isolated instance of poor judgement that didn't rise to the legal definition of misconduct. Based on this record, we conclude that the Employer failed to satisfy its burden of proof.

**DECISION:**

The administrative law judge's decision dated August 30, 2017 is **REVERSED**. The Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided he is otherwise eligible.

---

Ashley R. Koopmans

---

James M. Strohman

**DISSENTING OPINION OF KIM D. SCHMETT:**

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

---

