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

BLAYNE T TIERNAN	:	
	:	**HEARING NUMBER:** 10B-UI-10329
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
ELECTROLUX HOME PRODUCTS 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, 96.3-7

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. Two 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, Blayne T. Tiernan, was employed by Electrolux Home Products, Inc. from May 6, 1991 through June 16, 2010 as a full-time maintenance mechanic. (Tr. 2-, 5) The employer provided all new hires a personnel handbook containing lockout-tag out procedures. (Tr. 3, 6) The claimant also received specific training on the procedure. (Tr. 4, 6) According to the old shop rules, failure to perform this procedure warranted a three-day suspension; second offense – five-day suspension; final offense – termination. (Tr. 6-7) On November 3, 2003, the employer modified the shop rule to indicate a termination for a first such offense. (Tr. 8)

During his tenure, the claimant received a few written warnings for unsatisfactory work (June 2, 1998, April 12), the last of which occurred three years ago on June 4, 2007. (Tr. 4-5) On the night of June 8th, the claimant and a co-worker were filling presses with oil. In the process, they noted a leaking hose, which they set out to fix. (Tr. 6) The men turned off the press, pulled off the hose, and preceded to the

other side where the hoses were. While doing this, each man got called away from the area. In the meantime, another employee came to that press and started it back up, which resulted in oil being pumped onto the floor. (Tr. 6) Neither the claimant, nor his co-worker performed the lockout-tag out procedure. (Tr. 6) Mr. Tiernan was terminated on June 16th for this first time violation. He did not know of any other employee who was terminated for a first offense. (Tr. 7)

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.

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 was a long-term employee admittedly having knowledge of the lockout-tag out procedures. In all his years of employment, he had never had a problem complying with this shop rule. In fact, the only discipline he had ever received involved the nebulous description of unsatisfactory work, which he had received in over three years. While we do understand the importance of this safety rule and that the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). This record does not establish that the claimant demonstrated recurring instances of negligence as described in the legal definition of misconduct. Mr. Tiernan's failure to lockout-tag out was an isolated instance of poor judgment. By the employer's own history, even a second offense didn't warrant a termination. For this reason, we conclude that the employer has failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated September 7, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provide he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv