

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

BARBARA J NOREM

Claimant

and

BETHANY MANOR INC

Employer

:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 22B-UI-24224

**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

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer 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 Employment Appeal Board would adopt and incorporate as its own the administrative law judge's Findings of Fact with the following modifications:

The Claimant received the Employer's personnel handbook that she signed in acknowledgement of receipt during her orientation on June 9, 2020. The personnel handbook that contains a policy (respectful work environment policy) that prohibits harassment or bullying between co-workers.

The Claimant had a 'known history of struggles' with being professional in the workplace.

The co-worker she confronted about the missing pill was a relatively new employee. The Claimant had already had a previous run-in with this co-worker in which she failed to follow the chain of command in reporting that incident.

When questioned by her supervisor about the October 7th incident, the Claimant gave different versions of the matter, which didn't comport with witness accounts of the incident. The Employer found the Claimant's behavior extreme.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2021) 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 Employer's version of events. There is no dispute the Claimant received the personnel handbook regarding the Employer's policy prohibiting harassment and bullying in the workplace. It is clear from this record, the Claimant 'struggled' with her interactions with her co-workers, and this was not the first time she confronted her co-worker. We agree with the Employer's characterization of her behavior as extreme. The Employer has a right to expect civility between its employees, particularly in this particular environment when employees are responsible for the healthcare and well-being of its residents. The Claimant's behavior, i.e., calling a co-worker a drug addict in the presence of other co-workers and residents, cannot be considered a good faith error in judgment. Rather, we find her behavior was a blatant disregard of the Employer's policy. For this reason, we find the Employer satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated January 21, 2022 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

AMG/fnv