

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

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RAY A LIGHT

Claimant

and

PILOT TRAVEL CENTERS LLC

Employer

HEARING NUMBER: 19BUI-11785

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:** 96.5-2-A, 96.3-7

**D E C I S I O N**

**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 Claimant, Ray A. Light, worked for Pilot Travel Centers, LLC from July 6, 2018 through October 17, 2018 as a full-time overnight cashier. The Claimant received training and signed in acknowledgement of receipt of the Employer's policies on July 11, 2018. (Employer Exhibit 1; 8:12-8:28) In early October, Mr. Wilson became manager of the store. Several employees told him it was common knowledge the Claimant stole money. The manager initiated an investigation in which he set up video surveillance system over the cash register. On October 4<sup>th</sup>, the cash register was short \$20. The Employer reviewed video footage for that day and observed the Claimant initially look around, subsequently ring up a 'no sale', and then remove a \$20 bill on two occasions from the cash register. The following Saturday, October 13<sup>th</sup>, the Employer reviewed video footage and observed the same behavior by the Claimant who took \$20 out of the register and placed it in his pocket. The Claimant was also observed on October 15<sup>th</sup> via video surveillance taking \$20 out of the register. When the Employer confronted the Claimant, he denied taking any money from his register.

The Claimant received no warnings for these past three incidents. However, the Claimant admitted to being suspended pending investigation for previous theft allegations prior to Mr. Wilson's becoming manager. The Employer discharged the Claimant for theft.

## **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 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. The Claimant, admittedly, had already undergone investigation for allegations of theft prior, which he testified was unfounded. However, allegations of theft continued after the new manager came on board, which resulted in another investigation that revealed several instances of the Claimant ringing up 'no sales', and subsequently taking money out of the register in \$20 increments. Although the video was not available at the hearing, the Employer provided credible testimony regarding his personal observations of the Claimant's furtive behavior prior to taking the money, which was indicative of someone not wanting to be caught performing an illicit act.

The Claimant's repeated acts show a pattern of behavior that goes against the Employer's interests. No employee need be warned that taking money under the circumstances is considered theft and actionable with termination. Based on this record we conclude the Employer satisfied their burden of proof.

#### **DECISION:**

The administrative law judge's decision dated December 31, 2018 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Because the Claimant has received two consecutive agency decisions that allowed benefits, the Claimant is now subject to the double affirmance rule.

Iowa Code section 96.6(2) (2007) provides, in pertinent part:

...If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5...

871 IAC 23.43(3) provides:

Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the

claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

In other words, as to the Claimant, even though this decision disqualifies the Claimant for receiving benefits, those benefits already received shall **not** result in an overpayment.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv