

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

TONYA E WILLIAMS

Claimant,

and

FAREWAY STORES INC

Employer.

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HEARING NUMBER: 15B-UI-12997

**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. 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, Tonya E. Williams, worked for Fareway Stores, Inc. from May 30, 2013 through November 17, 2014 as a full-time buyer's assistant. (3:18-3:29) At the start of her employment, the Employer issued an Employee Handbook containing the Employer's policy regarding lunch time and breaks. Employees who worked 8-hour shifts and received hourly wages are allowed to take two, paid 15-minute breaks (one in the morning; one in the afternoon) with a ½ for lunch (unpaid). (14:48-15:05; 15:20; 15:40; 15:46-15:52; 23:18-23:25; 24:54-25:03) Employees are not allowed to combine breaks with a lunch break without prior authorization. (14:58-16:05; 25:04-25:10) The Employer's handbook also points out that falsification of an employee's timesheet can be grounds for termination. (35:45-35:58) Ms. Williams signed in acknowledgement of receipt a copy of the Employer's handbook (15:31-15:48; 23:40-23:57; 36:32-36:36; Exhibit 3)

In early autumn of 2014, an employee informed the controller that Ms. Williams was failing to properly clock in and out for work and her lunch breaks. (4:41-4:45; 5:02-5:04) An investigation ensued; the Employer installed temporary surveillance cameras in the break and reception areas, as well as a time-keeping system to monitor activity. (5:19-5:44) This surveillance occurred over a two-week period, after which time the Employer reviewed the information comparing it to Ms. William's actual timesheet for clocking in and out. (5:49-6:05) The video confirmed that the Claimant took excessive lunch breaks in which she wasn't fully 'punched out' on several occasions. (6:08-6:19; Exhibits 1 & 2)

On November 11, 2014, the Claimant took a lunch break and did not clock out; even though she had four opportunities to do so. (4:31; 30:35-30:54) Ms. Williams was unable to provide any explanation as to why she did not properly punch in or out for her lunch break. The Employer considered the Claimant's behavior to be a falsification of her timecard, i.e., theft from the company, which is a '[terminable] offense on the first time.' (36:54-37:11) The Employer terminated the Claimant on November 17th, 2014.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) 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 provided credible evidence that the Claimant was violating company policy as it related to break times and lunch break. Ms. Williams admitted offsetting her paid break times (morning and afternoon) with her unpaid lunchtimes, which was specifically prohibited by company policy. Although the Claimant alleges that she was merely 'doing what everybody else does,' her argument lacks merit. If she believed what she was doing was common practice and okay, why then did she have to hide it by falsifying her timesheet so that it didn't reflect her true break and lunch times? It is clear that the Claimant intrinsically understood that what she was doing was contrary to the work rules and unacceptable. When we take into consideration her signature on the Acknowledgment (Exhibit 3), coupled with her stealthy behavior, it is probative that Ms. Williams not only understood the policy, but tried to conceal the fact that she wasn't complying with it.

The Employer was not unreasonable in considering her timesheet falsification as theft from the company – an act worthy of termination on the first offense. Here, the record shows multiple offenses such that the Claimant's behavior can only be characterized as a blatant disregard for the Employer's interests. Any reasonable person would know that a person needn't be reminded or forewarned that theft is wrong, and subject to some type of punishment (termination). The Employer needn't have provided the Claimant with any type of warning, progressive or otherwise, that she shouldn't steal from her employer. The fact that the Employer did not issue a warning does not diminish its case regarding her falsification. Based on this record, we conclude that the Employer satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated January 20, 2015 is **REVERSED**. The Claimant was discharged for disqualifying reasons. Accordingly, the Claimant is denied benefits until such 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".

Kim D. Schmett

James M. Strohman

DISSENTING OPINION OF ASHLEY R. KOOPMANS:

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

Ashley R. Koopmans

AMG/fnv