

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

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**SHALAIN M BROWN**

Claimant

and

**ALDI INC**

Employer

**HEARING NUMBER: 19BUI-04053**

**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, 96.3-7

**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. 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, Shalaine Brown, worked for Aldi, Inc. from January 26, 2018 through April 19, 2019 as a full-time store associate. The Claimant received and signed in acknowledgement of receipt the Employer handbook that contains the Employer's return policy. That policy indicates that all returns must include the customer's contact information, the customer's signature and cashier's signature for subsequent district manager approval. (Employer's Exhibit 1) The Claimant's immediate supervisor was Michael Bulman, the store manager.

The Employer requires cash-audits to be run every 2-3 weeks to review and investigate whether there are any suspicious voids or returns (repetitive or made before or after hours). While running such an audit on April 12, 2019, Lindsay Randklev, the district manager, noted a return made on April 2, 2019 at 9:08 p.m. (over an hour after the store's closing) for purified water for \$2.29. Ms. Randklev investigated further by watching video surveillance; however, she was unable to determine from the video whether or not it was money the Claimant pulled out of the register. She also noted there was no customer around, nor any product.

On April 19<sup>th</sup>, the Employer confronted Ms. Brown who explained a woman came in at closing time, purchased water and complained something was wrong with it. The Claimant told her she could exchange it, but the customer declined. The Claimant told her supervisor, who directed her to give the customer what she wanted, and they'd fix it later. (Department Exhibit 1) Ms. Brown returned the customer's money, but didn't obtain the customer's information according to policy because the store was busy. After the store closed, the Claimant fixed the problem without the customer's presence or the product. The Employer terminated the Claimant on April 19, 2019 for violating the store's return policy.

## **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 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. While the Claimant was not available to provide testimony, we attribute more weight to the Claimant's version of events in her Fact-finding Interview statements, which are a part of the record. (Department Exhibit 1)

Both parties agree the Employer has a return policy in place, which the Claimant had knowledge. However, we find the circumstances under which the Claimant acted outside of that policy was not an intentional disregard for that policy. Ms. Brown simply complied with her supervisor's directive by pleasing the customer and returning her money, which any reasonable person would have done under the circumstances. An employee's failure to perform a specific task (in this case follow return policy) may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The Board must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985). Good faith under this standard is not determined by the Petitioner's subjective understanding. Good faith is measured by an objective standard of reasonableness. "The key question is what a reasonable person would have believed under the circumstances." Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330, 337 (Iowa 1988); accord O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause).

There was no dispute the return occurred at closing time, which the Claimant indicated was busy. Ms. Brown acted in good faith by following her supervisor's instruction, even though it was outside return protocol. Her supervisor was not available to refute her statements, nor did the Employer provide any statements from him to controvert her version of events. The Claimant's effort to 'fix' the delay in recording the return involved her entering the numbers 333-333-3333 presumably in place of the customer's phone number. It was not wholly unreasonable for her to do this given the fact she no longer had access to the customer's name and phone number. So, she acted in good faith by entering these numbers to somehow show a return had occurred. If she was truly trying to deceive the Employer by falsifying a receipt, why not make up a more credible telephone number with a fake name? There is no evidence to support she stole money from the cash register, nor is that the asserted reason she was discharged. Rather, the Claimant was solely terminated for violating the return policy. Based on this record, we conclude this was an isolated instance of misjudgment that didn't rise to the legal definition of misconduct. For this reason, we conclude the Employer failed to satisfy their burden of proof.

#### **DECISION:**

The administrative law judge's decision dated June 13, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

AMG/fnv

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James M. Strohman