

Unfortunately for the Claimant the staff at some of the competitors knew him on sight. (Tran at p. 27-28). When they saw him they would make him leave. (Tran at p. 26-27). This made it hard for the Claimant to do this job duty. (Tran at p. 26-28). When the Claimant told his supervisor about this problem his supervisor told him to "get what he could get." (Tran at p. 27). The Claimant believed that he had been instructed that when he could not get the actual prices he should use the most recent ones he could remember. (Tran at p. 10; p. 27-28; p. 30; p. 32).

The employer received a price check report from the Claimant on January 7, 2009 for the week ending January 11. (Tran at p. 3-4; p. 11; p. 16; Ex. 4). The report covered prices at the local Fareway store. (Tran at p. 4; Ex. 4). The Claimant was well-known at that store. (Tran at p. 10; p. 16; p. 27; p. 29; p. 33). On the report the Claimant included estimated prices, based on what he had seen before, because he was able to get actual prices. (Tran at p. 30-32; p. 34). The Claimant failed, however, to show which prices were estimates. (Ex. 4).

When he received the report Mr. Bohaty went to the Fareway store. (Tran at p. 12; p. 13-15; p. 24). He recorded prices for some of the same items on the Claimant's report. (Tran at p. 13-15; Ex. 4). At least 33 of the 40 items on the Claimant's list had incorrect prices. (Tran at p. 4; p. 13-15). The Employer also checked some of the prices at No Frills and found discrepancies on 14 of approximately 110 items. (Tran at p. 17). The Employer discharged the Claimant solely for the stated reason of providing false information on a price check report. (Tran at p. 2; p. 18-20; p. 23; p. 25).

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.

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." Huntoon v. Iowa Department of Job Service, 275 N.W.2d, 445, 448 (Iowa 1979).

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 have found credible the Claimant's testimony that he had problems with being recognized, particularly at Fareway. We also believe the Claimant's testimony that he thought he was authorized to "do the best he could." The Claimant credibly testified that he thought he could get as many as prices as possible and could estimate the rest based on past results. Perhaps the Claimant used poor judgment by not indicating which prices were estimates. But poor judgment is not misconduct. Kelly v. IDJS, 386 N.W.2d 552, 555 (Iowa App.1986); Richers v. Iowa Dept. of Job Service, 479 N.W.2d 308 (Iowa 1991). The Employer has failed to prove by the greater weight of the evidence that the Claimant committed misconduct.

DECISION:

The administrative law judge's decision dated March 2, 2009 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside.

John A. Peno

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RRA/ss

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DISSENTING OPINION OF MONIQUE KUESTER :

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

Monique F. Kuester

RRA/ss