

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

LISA R ANKNEY

Claimant

and

THE UNIVERSITY OF IOWA

Employer

HEARING NUMBER: 17BUI-07680

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, 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, Lisa R. Ankney, worked for The University of Iowa as a full-time clinical technician from August 27, 2012 through June 23, 2017. The Employer has a personal handbook which contains the cash handling policy and prohibits theft of services, inter alia, for which the Claimant signed in acknowledgement of receipt. (10:10-10:26)

The Claimant usually commuted to work via university van paying \$20 daily. (23:50-23:57) On May 26, 2017, the Claimant received a call approximately 5:30 a.m. that the van driver would be unavailable that day. (15:55; 18:53) Because there is no back-up driver, employees are expected to provide their own transportation. (20:53-21:12; 32:22-32:57) Ms. Ankney volunteered to use her personal vehicle (which was more reliable than her co-workers) and provided transportation for two of her co-workers. (18:55; 21:28-21:43) She had the choice of parking in the ramp (apart from patient side) paying up to \$20 daily; Hawk lot, which is metered parking; or street parking. (16:18-16:50) When she got to the university, she parked in Ramp 4.

Ms. Ankney also printed a parking voucher at approximately 8:42 a.m. for a patient who uses valet parking and whose appointment wasn't until 9:30 a.m. (7:27; 7:40-8:09) At the end of her shift, she, along with her co-workers, went to the patient parking ramp; turned in the patient's parking voucher paying the difference between the patient discount and regular fee (\$10) with her personal credit card. (8:20-8:36) The cashier who took her payment assumed she was a nurse based on her 'scrub' attire. He subsequently turned in Ms. Ankney's payment slip with a notation that she was using patient validation for personal parking. (8:40-9:03) This information was placed in a batch, which is validated once a month. (9:30-9:36)

On June 20th, 2017, Safety and Security traced the parking pass to the Claimant's vehicle and contacted the Employer regarding an employee with a possible theft of services using a patient parking pass for personal use. (9:38-9:53) When questioned, the Claimant explained the van driver was not available that day. (15:55; 18:53) On June 23, 2017, the Employer and Safety & Security met with the Claimant at the start of the investigation. Ms. Ankney was warned that the outcome of the inquiry could result in a written warning, suspension or termination. At the conclusion on the investigation, the Employer terminated the Claimant for theft of services. The Claimant had never been warned about any previous incidents. (10:31-10:34) If she hadn't driven to work on May 26th, she and her co-workers would have had no transportation to get to work. (25:33-25:48)

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).

There is no dispute that the Claimant had knowledge of the Employer's policies. Yet, according to the Claimant's unrefuted testimony, when it came to parking, other employees regularly printed off vouchers to use when parking in the patient parking ramp. It was not wholly unreasonable for the Claimant to believe she was committing no infraction given what she observed to be common practice by other employees.

The Claimant's achieving discounted parking on one day in question was of no significant benefit to her. Additionally, the Claimant provided credible testimony that she had never used a parking pass in the past because she normally rode the van to work, which was unexpectedly unavailable that day with no possibility of a back-up driver. Thus, she her behavior on May 26th was an isolated incident for which she had never been put on notice that it would unequivocally result in termination on the first offense. (27:19-27:28) While we don't condone policy violations, we certainly find the Claimant's action was not intended to cause harm to the Employer. Rather, it was an isolated instance of poor judgement that didn't rise to the legal definition of misconduct. Based on this record, we conclude that the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated August 18, 2017 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

DATED AND MAILED: _____