

partially caught on video surveillance. (15:45-15:19; 15:11-14:49; 10:20; 9:54) The Employer never issued either a verbal or written warning to the Claimant for any prior infraction. (12:44-12:39; 10:07; 6:40-6:35)

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 record establishes that the Claimant went outside to perform outside duties, which the Employer denied she was doing purportedly based on the video surveillance tape that was never seen by the Claimant, nor offered into evidence. Additionally, by the Employer's own testimony, the video stops short on revealing where the Claimant was, or what she was doing, once she passed beyond the path of view, which was alongside the building where Ms. Langman indicated she was sweeping. The video, according to the

Employer's testimony, also corroborated that the customer came into the store while Ms. Langman was outside.

While the Claimant may have used poor judgment in going outside when there was only one other employee on duty, her rationale for doing so was not wholly implausible. She provided unrefuted testimony that she asked the co-worker to keep an eye on her register, which was obviously done when the customer was sent outside to ask for assistance. Both parties agree that Ms. Langman had never received any prior reprimands for such behavior. This this appears to be an isolated incident.

As for her alleged refusal to clean the pizza oven, the Claimant provided a reasonable explanation for her refusal, which the Employer did not refute. We attribute more weight to the Claimant's firsthand testimony. Based on this record, we conclude that the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated October 4, 2013 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, the claimant is allowed benefits provided she is otherwise eligible.

John A. Peno

Cloyd (Robby) Robinson

DISSENTING OPINION OF MONIQUE F. 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

AMG/fnv