

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BEVERLEY D WHITE**  
Claimant

**APPEAL NO: 12A-UI-06711-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 05/13/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Pilot Travel Centers, L.L.C. (employer) appealed a representative's June 1, 2012 decision (reference 01) that concluded Beverley D. White (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2012. The claimant participated in the hearing and presented testimony from one other witness, Frank Fichter. Lisa Dahlcotter appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on October 23, 2009. She worked full time as a shift leader at the employer's Council Bluffs, Iowa location. Her last day of work was May 12, 2012. The employer discharged her on that date. The reason asserted for the discharge was loyalty card fraud.

The employer has a program where diesel customers can earn points on a "loyalty card" which they can later use to pay for food and showers. On one day, April 18, the employer found that the claimant had loaded points for 16 transactions onto the card for one customer, Frank "J.R." Fichter. The employer has a widely disregarded policy indicating that employees cannot load points from multiple transactions onto a card on the same day. The claimant had not been aware of the policy, and it was common practice for employees to load on as many transactions as the customer had receipts. When the employer saw the points for the 16 transactions, it assumed but did not verify that the transactions were for gasoline purchases rather than diesel

and that the claimant might have had made some arrangement with Fichter under which she might benefit. It therefore discharged the claimant asserting there was loyalty card fraud. However, Fichter is the manager and dispatcher of a trucking company, and the trucks frequently were filled at the employer's location, accounting for the large number of transactions which had not been previously added to the customer's loyalty card.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the belief that there was loyalty card fraud. The employer has not established that there was any fraud. Under the circumstances of this case, the claimant's processing of the points for multiple transactions on the same day was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 1, 2012 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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