

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

---

**PATTI R WILSON**

Claimant,

and

**HY-VEE INC**

Employer.

:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 14B-UI-05009**

**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**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Patti Wilson (Claimant) worked part-time for Hy Vee Inc. (Employer), most recently as a clerk in the wine and spirits department from November 2013 until she was fired on February 15, 2014.

The Employer's policy requires employees to sell tobacco only to customers 18 and older and alcohol only to customers 21 and older. Employees are responsible for checking a customer's identification and their birthdate. The Employer's cash register operates so that if a restricted item, like tobacco, is scanned then the register will lock and will not process the sale until the customer's birthdate is entered into the system. The Employer's cash registers have a function that requires the employee to input a customer's birthdate. If a birthdate that is not legal is entered then the register blocks the sale.

The Claimant understood that selling tobacco or alcohol to a minor was prohibited by the Employer. She also understood the Employer would discharge an employee the first time an employee sold alcohol or tobacco to a minor.

On February 15, 2014, the Claimant looked at a customer's identification and birthdate. The customer wanted to buy a tobacco product. The Claimant did not enter the customer's birthdate into the cash register. The Claimant somehow bypassed the register's lock and sold the tobacco to an underage customer. The customer's birthday was in 1997. For the customer to legally buy tobacco, the customer had to be born in 1996. After the Claimant sold tobacco to the underage customer, a police officer came into the store and gave the Claimant a ticket.

The Employer discharged the Claimant on February 15 for violating the Employer's policy about selling tobacco only to customers who were 18 years or older.

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

Iowa Code Section 96.5(2)(a) (2014) 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). "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000).

Here the record establishes that this is not a case of negligence. The Claimant not only failed to input the customer's birthdate, but somehow bypassed the system that locked the sale if the wrong date was entered (for example, by entering some other date). Notably the Claimant does not say she entered the wrong date by accident, but instead claims she entered no date. Yet the sale was completed, and a ticket written as a consequence. We conclude the Claimant was guilty of more than mere ordinary negligence, instead we conclude that the Claimant disregarded mandatory procedure. The Claimant understood that the date verification procedure was mandatory every time, and she made the choice to skip those procedures, indeed to bypass them.

The Administrative Law Judge found that the Claimant was guilty of only a single isolated instance of negligence. The problem with this claim is that the record does not show some error in entering the date, but rather an intentional choice being made to bypass the process altogether. Given the importance of those procedures, this was a substantial disregard of the Employer's interests.

#### **DECISION:**

The administrative law judge's decision dated June 19, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, the Claimant is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)(a).

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

---

Kim D. Schmett

---

Ashley R. Koopmans

**DISSENTING OPINION OF CLOYD (ROBBY) ROBINSON:**

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.

---

Cloyd (Robby) Robinson

RRA/fnv