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

KATRINA J BROOKS	:	
	:	**HEARING NUMBER:** 17BUI-07829
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
US BANK NATIONAL ASSOCIATION	:	
	:	
Employer	:	

N O T I C E

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

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two 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:

Katrina Brooks (Claimant) worked for US Bank (Employer) as a full-time teller/coordinator from October 3, 2014 until she was fired on July 7, 2017. The Claimant knew the bank's policies and procedures. Under those policies a teller is not allowed to run transactions for any family members. Doing so is a termination offense.

The Claimant's son, who does not have an account at the bank, came to the bank to deposit eighty dollars into his sister's account. His sister is the Claimant's daughter. The Claimant was working at a teller window. She called her son to come to her teller window so she could talk to him. As the Claimant's son was at her window, the Claimant filled out a deposit ticket for her daughter's account, took the eighty dollar deposit from her son and ran the transaction. She violated the employer's policy by running the transaction. Talking to her son was not a violation, and simply helping with the deposit slip was not a violation. Running the transaction, which the Claimant did automatically without thinking, was the violation. The Claimant simply was not thinking of the policy at that time she did this and she had no ulterior motive, or bad faith. She had been distracted by the news from her son that one of his co-workers had been injured on the job and may not survive. Running the transaction was a simple mistake.

As soon as the Claimant ran the transaction and saw her daughter's name on it she immediately realized that she had done was a violation of the Employer's policy. Without delay she immediately reported to her manager what she had done. The transaction was then voided, and handled by another bank employee. Management communicated with human resources to see if a penalty short of discharge could be imposed. Based on directions from human resources the Claimant was discharged for this single instance of running transactions for family members.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2017) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
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> 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 Claimant in this matter is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Such good faith instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Service*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App.1986); 871 IAC 24.32(1)(a). Here the good faith is amply demonstrated by the Claimant immediately reporting the incident. The record shows no other discipline and thus the error in judgment is isolated, as described in the rule.

The case of *Flesher v. IDJS*, 372 N.W.2d 230 (Iowa 1985), which denied benefits, actually supports our conclusion. In *Flesher*, as in this case, an employee failed to follow important security procedures of the employer. The Court noted that "[w]hile the definition of misconduct does not specifically address an employee violating security procedures, we conclude that such a violation without dishonesty may be deemed misconduct." *Flesher* at 234. In so ruling the Court was careful to explain that "[r]epeated violations of a security rule, depending upon the effect on the employer and employer reaction to a knowing violation, **may** indicate that employee actions are **more than** ordinary negligence and, rather, represent a substantial disregard of the employer's interest." *Flesher* at 234 (emphasis added). In affirming the Board the Court found that a reasonable fact finder could find that the final act was not "due to oversight **or lapse of judgment**." *Flesher* at 234. The Claimant here, unlike the one in *Flesher*, has not been shown to be guilty of repeated negligence or a willful decision to disregard policy, but only a "lapse of judgment." Such isolated lapses which are made in good faith – exactly the case here - are not disqualifying.

The Board understands that security procedures are extremely important to the Employer. We do not question the decision to terminate a worker for violating a security procedure. This may very well be a compelling reason for a termination. Yet it is common for actions that are not misconduct to nevertheless implicate important policies. For example, drivers of commercial vehicles have specific requirements on the time and manner of driving imposed on them by law. 49 CFR 383. This does not mean drivers who are engage in ordinary negligence, in violation of the rules of the road, commit misconduct. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000); *Fairfield Toyota, Inc. v. Bruegge*, 449 N.W.2d 395 (Iowa App. 1989). Food service workers must handle food, dress, use the restroom, etc. as prescribed the Food Safety Code. Iowa Code §137F.2 (adopting 1997 food code for all Iowa food establishments). This does not mean a food service worker who forgets to wear a hairnet commits misconduct because just because it is a violation of a regulation. Nurses must administer medications according to the licensing standards of their profession and of whatever facility they may be working in. 655 Iowa Admin. Code 4.6 (nursing standards); 481 IAC 58 (skilled nursing facility); 481 IAC 57 (residential care facility); 481 IAC 51.7(hospital). This does not make poor judgment in rendering care, in violation of governing regulations, into misconduct. *Infante v. Iowa Dept. of Job Service*, 364 N.W.2d 262, 265 (Iowa App. 1984). Construction and manufacturing workers are expected to comply with very important OSHA safety regulations yet their violation of those standards does not automatically mean they are disqualified. Servers should not sell beer to a minor, but a single lapse in memory resulting in a failure to card would not normally be misconduct. The Board's point is that many employees may engage in isolated acts of negligence, unsatisfactory conduct, or poor judgment that violates some policy, rule, or regulation. This fact alone does not convert a single negligent act, or a single good faith error of judgment into misconduct. The key is the nature of the conduct alleged to be disqualifying – not just the importance of the policy at issue. In other words, "[m]isconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.* 616 N.W.2d 661, 665 (Iowa 2000); *Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct.App.1995); *Reigelsberger v. Employment Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *Breithaupt v. Employment Appeal Bd.,* 453 N.W.2d 532, 535 (Iowa Ct.App.1990); *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219, 222 (Iowa App. 1983); *Irving v. Employment Appeal Bd.,* 883 NW 2d 179, 201 (Iowa

2016). This case falls within that rule. We understand why the Claimant was discharged but do not find that the Employer has proven this reason sufficient to disqualify the Claimant.

DECISION:

The administrative law judge's decision dated August 24, 2017 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.

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv