

On January 31, 2009, the claimant did not request ID (driver's license) from a customer who left what appeared to be a fuel card while the customer pumped his gas. (Tr. 3, 7, 8, 11) The customer pumped \$154.87 worth of gas and drove off without retrieving his fuel card. (Tr. 7) When the claimant saw that the fuel card was declined, she contacted the Roxanne Poorker, the assistant manager, who was home in bed. (Tr. 3, 5, 12) Through tears, she explained what happened.

The following day, the employer attempted to contact the company that held the card, but it was difficult because the company name was very common. The results were either that the company contacted didn't accept such payments or the company was out of business. (Tr. 4) As it turned out, the card was actually a credit card. (Tr. 13)

Cory Williams, the store manager, terminated Ms. MacCleary on February 1, 2009. (Tr. 2, 5, 8) The only other discipline the claimant received was back on February 24, 2008 for improper cash handling (cash over short). (Tr. 5, 14)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) 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).

It is clear from this record that Ms. MacCleary took what she believed was a fuel card, as opposed to a credit card, and failed to ask for proper identification. It was under this mistaken belief, that she authorized the customer to pump gas. She acknowledged through testimony the employer's policy regarding the different treatment a credit card was afforded as opposed to a fuel card (Tr. 9-10), which was corroborated by the employer. (Tr. 14) The only reason, she didn't ask for ID was due to a good faith error in her judgment. Iowa law provides that "... inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct..." See, 871 IAC 24.32(1)" a", *supra*. Additionally, the court in Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986) held that a single good faith error in judgment is not misconduct; however, a single incident would be misconduct where it showed deliberate disregard of the employer's interests.

The employer failed to prove that Ms. MacCleary's behavior was deliberate or an intentional disregard of their interests. As soon as she became aware of the mistake, she immediately attempted to rectify it, albeit to no avail. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For all the foregoing, we conclude that the employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated April 16, 2009 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

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