

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

MARY J STOUT

Claimant,

and

HY-VEE INC

Employer.

:
:
:
:
:
:
:
:
:

HEARING NUMBER: 13B-UI-10057

**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-A, 96.3-7

DECISION

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:

The Employment Appeal Board adopts and incorporates as its own the administrative law judge's Findings of Fact with the following modifications:

Mr. Detweiler, the Employer's primary witness, was not present when the verbal warnings were issued. (Tr. 3, 24) The single written warning, which Ms. Stout never received (Tr. 24), contained no caveat that one more infraction could result in her termination. (Tr. 4-5, 24, 27)

The Claimant received several orders for floral deliveries going to the same funeral home for the same funeral on May 17, 2013. (Tr. 16, 24-25) Mr. Snyder hung up on the Claimant before she could try to accommodate him. (Tr. 25) Ms. Stout continued to work for Hy-Vee's floral department for an additional month. (Tr. 26)

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 Ms. Stout was discharged for making a statement during non-work hours, which she believed she was making in confidence. Nothing in this record indicates that the Claimant lied about Mr. Snyder; she merely commented based on her recent difficult experience with him where he became angry and hung up in her face. (Tr. 25) As for the single written warning the Employer allegedly issued due to customer complaints, we find that Ms. Stout provided credible testimony that she never received the written warning, which can be reasonably corroborated by the fact that she didn't sign the written warning by the Employer's own admission. (Tr. 4-5, 24) Thus, she never (even by the Employer's accounts) had warning that her job was in jeopardy. (Tr. 4-5, 24, 27) 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).

The claimant may have used poor judgment, but there was no willful intent to harm the Employer. She was merely reacting to directly conflicting directives, one from her supervisor whose authority she reasonably believed outweighed the customer's request, and the other directive from Mr. Snyder (the customer) who became angry at her response. At worst, we would conclude that her remark regarding the confrontation was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. 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 2, 2013 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Cloyd (Robby) Robinson

AMG/fnv