

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

---

**BRAD J OVERHOLSER**

Claimant,

and

**DES MOINES BICYCLE COLLECTIVE**

Employer.

:  
:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 14B-UI-08793**

**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**

**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:**

Brad Overholser (Claimant) worked for Des Moines Bicycle Collective (Employer) most recently as a shop manager beginning in March 2008 until he was fired on July 26, 2014. The executive director of the Employer is Jeremy Lewis.

It was routine practice of the Employer during the Claimant's years of employment to have a small bag for petty cash. The petty cash fund was kept in an envelope next to the register. Many employees made use of the petty cash, with full knowledge of the Employer. The fund was used to pay for small gifts to volunteers as an incentive. When funds were used a note to this effect was written on the side of the envelope.

During the last week of June a former employee stole money from the Employer's petty cash, after breaking and entering. The thief took money from petty cash because he was unable to break into the cash register. Mr. Lewis discovered this and then in late July discharged the Claimant for the stated reason of not following a claimed new petty cash policy that required processing of petty cash through the register.

The Employer has failed to prove by a preponderance that the Claimant was in fact ever told, or otherwise made aware, that he must so relocate the petty cash. The Employer offers no evidence whatsoever sufficient to show that the Claimant was embezzling from the Employer. The Employer has failed to prove that the Claimant violated a known policy of the Employer.

## **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).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Claimant's denial that he was given specific instruction to abolish the petty cash envelope and process any such transaction through the cash drawer.

In application of the law to the fact we have found the lack of notice that the Claimant was doing anything wrong of course undermines a finding of misconduct. As far as what was proven at hearing the Claimant was following what he had done for years, and this practice was known and yet not disapproved by the Employer. In this the case puts us in mind of *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986) which also involved security. There the claimant failed to follow a new policy on securing the cash bag. The Court of Appeals found that given that the policy was new and poorly understood by the claimant any error in her failing to put the receipts away properly was but a good faith error of judgment. Thus one failure to follow a policy change was not misconduct where it was the result of confusion. Much less is it misconduct in the case at bar where, assuming there was a change in the petty cash policy, the Employer has not proven that this change was *ever* clearly communicated to the Claimant. He did what he had always been doing, and as far as he knew this was acceptable. This is not a disregard of instruction, or even negligence, and does not become misconduct because some other employee exploited the Employer's trust and stole from the Employer. Willful and wanton disregard of the Employer's interest by *this* Claimant was not proven, and we cannot find misconduct on this record.

**DECISION:**

The administrative law judge's decision dated September 15, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason / quit for good cause attributable to the employer. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

---

Kim D. Schmett

---

Ashley Koopmans