

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

KATHRYN R TRUE

Claimant,

and

FRANCIS LAUER YOUTH SVCS INC

Employer.

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HEARING NUMBER: 14B-UI-09051

**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 DENIED

The Employer 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:

At the time of hire, the Employer trains each employee on the process of accurately recording their contact hours on both their contact sheets and their payroll timesheets. Ms. True received training.

In December of 2013, the Employer found a 33.2-hour discrepancy in the number of contact hours the Claimant had recorded between her payroll information and her payroll timesheet. The Employer issued a verbal warning to the Claimant and met with her to review via coaching on the proper method of accurately recording the information. The Claimant's performance of accurately recording improved for the following months until May of 2014 in which she experienced a discrepancy of 13½ hours.

The Employer, again, warned the Claimant about the importance of accurately recording her contact hours. In June, Ms. True experienced another discrepancy (32 hours) in her payroll sheets, which resulted in her being paid an extra \$1248.

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).

It is clear from this record that the Claimant was well aware of the importance of accurately recording her hours so that they matched her contact hours and payroll information. The Claimant established that she was capable of performing this task based on the several months she completed these tasks appropriately.

The three separate occasions (December, May & June) that the Claimant failed to accurately complete these forms, her errors resulted in her receiving pay beyond the number of hours recorded on her contact sheet, as

opposed to the hours she recorded on her payroll timesheets. The Employer warned the Claimant on the first two instances, as well as provided additional training to ensure that she wouldn't make these mistakes again. The fact that she continued to have such a discrepancy is indicative of "...carelessness or negligence of such degree of recurrence as to manifest equal culpability...or [a showing of] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer..." See, 871 IAC 24.32(1)"a". For this reason, we conclude that the Employer has satisfied their burden of proof.

DECISION:

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

Kim D. Schmett

Ashley R. Koopmans