

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

LOU E THORNTON

Claimant,

and

HOMEMAKERS PLAZA INC

Employer.

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HEARING NUMBER: 10B-UI-07513

**EMPLOYMENT APPEAL BOARD
DECISION**

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. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Lou Thorton (Claimant) worked for Homemaker's Plaza Inc. (Employer) as a full-time salesperson from August 27, 2001 until she was fired on April 21, 2010. (Tran at p. 2; p. 6). Under the Employer's policies a salesperson should not give a customer that salesperson's card if the customer is working with another salesperson. (Tran at p. 3).

On April 18 the Claimant was working in the rug department, which was her usual assignment. (Tran at p. 2; p. 6). Because the rug department was short on associates another employee, Pam DiCarlo, was sent to help out. (Tran at p. 2). When Ms. DiCarlo sold a rug the Claimant gave her card to the customer for future reference. (Tran at p. 3; p. 5; p. 6-7). The Claimant did this because she did not know Ms. DiCarlo had been assigned to the rug department even for that one day, and thus Ms. DiCarlo would not be around to handle future rug sales or queries. (Tran at p. 5; p. 6-7; p. 11; p. 19). This is

commonly done in like

circumstances. (Tran at p. 14-15; p. 20). Ms. DiCarlo felt that this was no big deal. (Tran at p. 11; p. 12-13). The Employer nevertheless fired the Claimant over the incident.

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.

"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).

We understand the point of the Employer's policy as an attempt to service customers by having one salesperson work with each customer. Naturally this also meets the goal of fostering cooperation among salespeople since they won't be stealing one another's contacts.

The Claimant in giving her card to the customer was trying to serve the customer. The customer would only be frustrated if, in the future, he or she attempted to ask about rugs with this same salesperson. By giving her card the Claimant was acting in what she reasonably thought was the customer's interest. Moreover, the co-worker understood why the Claimant did this, and did not think it was a serious matter. The Claimant had a good faith and reasonable belief that she was not doing anything wrong. Perhaps the Claimant was wrong in her judgment about this. But an mistake is not misconduct if it is based on a good faith error in judgment. We think that the Claimant's belief that she was doing right is justified by the circumstances and that a reasonable person could believe likewise. *C.f. Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988)(objective standard for determining good faith). We conclude based on this, and the Claimant's testimony, that her actions were in good faith even if they were against the letter of the policy. "[G]ood faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute." 871 IAC 24.32(1)(a). Even in consideration of the Claimant history the final act did not raise to the level of misconduct and benefits are allowed.

DECISION:

The administrative law judge's decision dated July 15, 2010 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.

John A. Peno

Elizabeth L. Seiser

RRA/fnv

DISSENTING OPINION OF MONIQUE 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

RRA/fnv

