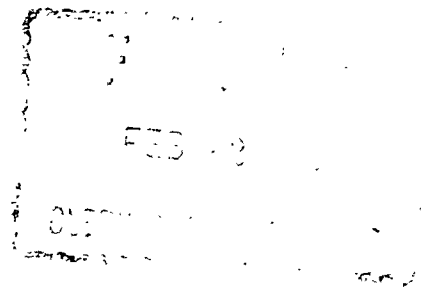


IN THE COURT OF APPEALS OF IOWA

No. 5-737 / 95-1178



**SHEILA K. FRAZIER,**

Appellee,

vs.

**EMPLOYMENT APPEAL BOARD and FARMLAND FOODS, INC.,**

Appellants.

---

Appeal from the Iowa District Court for Crawford County, James O. Scott,  
Judge.

Appeal from judicial review of agency action regarding determination of  
whether appellee engaged in misconduct disqualifying her from receiving  
unemployment benefits. **REVERSED.**

William C. Whitten, Employment Appeal Board, Des Moines, for appellants.

**Julie A. Schumacher** of Frank, Mundt & Frank, Denison, for appellee.

Heard by Habhab, P.J., Cady, J., and Perkins, S.J.\*

\*Senior judge from the Fifth Judicial District serving on this court by order of the  
Iowa Supreme Court.

**PERKINS, S.J.**

At issue in this appeal is whether it was misconduct for an employee to keep an unloaded gun in her locker at work. The Employment Appeal Board found it was misconduct and denied the employee's request for unemployment benefits. The district court disagreed and reversed the Board's decision. Given our limited scope of judicial review, we reverse and reinstate the decision of the Board.

Sheila Frazier was employed as a production worker for Farmland Foods, Inc. Her employment was terminated following the discovery of an unloaded gun in her locker at the workplace. The presence of the gun was discovered when Sheila's locker was searched by company officials. The search occurred as the result of the employer's receipt of an anonymous tip regarding the contents of Sheila's locker.

Prior to the search Sheila informed the officials they would find a gun in her locker. Sheila was going through dissolution proceedings and had obtained a restraining order against her husband. Her husband had threatened to use the gun to commit suicide and injure her and her children. Sheila had placed the gun in her locked ~~work locker~~ at least two months prior to the search. She had done this so her husband **would** not have access to the weapon. Farmland had a company policy prohibiting employees from bringing weapons to the workplace. Sheila was aware of this policy when she commenced her employment for Farmland.

Sheila was initially denied employment benefits on the basis that her conduct amounted to misconduct because she was discharged for violating a known company rule. Following a hearing, the administrative law judge reversed and granted Sheila benefits. The Employment Appeal Board reversed, finding Sheila's retention of the gun in her work locker for two months constituted misconduct. Upon judicial review, the district court reversed the Board's decision. It found Sheila's motive in bringing the gun to work had not been to interfere with the safety of her fellow employees but to keep the gun away from her husband. The Board now appeals.

#### **I. SCOPE OF REVIEW.**

The appeal is controlled by our scope of review. A court's review of agency action is severely circumscribed. *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). The administrative process presupposes judgment calls are to be left to the agency. *Id.* Nearly all disputes are won or lost there. *Id.* (citing *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815, 815-16 (Iowa 1991)). Thus the court may reverse, modify, or grant other appropriate relief only if agency action is affected by error of law, is unsupported by substantial evidence, or is characterized by abuse of discretion. Iowa Code § 17A.19(8) (1995); *Burns*, 495 N.W.2d at 699.

## II. MISCONDUCT.

At issue is whether there is substantial evidence to support the Board's finding of misconduct. Iowa Code section 96.5(2) provides a claimant is disqualified for unemployment benefits "[i]f the division of job service finds that the individual has been discharged for misconduct in connection with the individual's employment."

Iowa Administrative Code section 345-4.32(1)(a) defines misconduct:

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 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.

Our supreme court has repeatedly held this definition accurately reflects the intent of **the legislature**. See *Reigelsberger v. Employment Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993).

"Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Breithaupt v.*

*Employment Appeal Bd.*, 453 N.W.2d 532, 535 (Iowa App. 1990) (citations omitted). An employer has the burden of proving a claimant is disqualified for benefits because of misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989) (citations omitted).

A review of the record reveals Farmland had a policy prohibiting employees from bringing weapons to the workplace. Sheila was aware of this policy. She acted in violation of this policy when she brought the gun to work and when she kept it in her locker for at least two months. *See Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992) (employee's violation of employer's work rule was misconduct). Farmland had a safety interest in excluding weapons from the workplace and it had a right to expect its employees to adhere to its policy. Sheila's conduct was deliberate and amounted to a willful disregard of her employer's interests.

Sheila had a legitimate concern for her family's safety, and her husband's threats placed her in a difficult situation. These factors probably influenced the decisions of ~~the~~ administrative law judge and the district court. However, our review is limited to **whether** there was substantial evidence to support the Board's decision. Evidence is substantial if a reasonable person would find it adequate to reach the given conclusion, even if a reviewing court might draw a contrary inference. *Mercy Health Ctr. v. State Health Facilities Council*, 360 N.W.2d 808, 811-12 (Iowa

1985). There was substantial evidence to support the Board's finding of misconduct and the denial of benefits. We reverse the decision of the district court and affirm that of the Board.

**REVERSED.**