IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 1-138 / 90-1353

**TERRY L. MONEY,**

Appellee,

327

vs.

**EMPLOYMENT APPEAL BOARD and MONTGOMERY WARD & COMPANY,**

Appellants.

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Appeal from the Iowa District Court for Scott County, Jack L. Burns, Judge.

Montgomery Ward appeals a district court decision to reverse the Employment Appeal Board decision. **AFFIRMED.**

Michael W. Liebbe, Davenport, for Montgomery Ward.

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

Tommy Miller, Attorney, and Peggy Little, Law Student Intern, HELP Legal Assistance, Davenport, for Money.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

**OXBERGER, C.J.**

Terry Money was employed as a sales associate at Montgomery Ward & Company from October 1983 until September 18, 1988. The Montgomery Ward Guide states: "We want our associates to be heroes to our customers." Terry was discharged following a complaint from a customer that she was very nasty and very rude. The customer was demanding for the third time in three weeks a discount for which she was not entitled. Money allowed the customer the discount, and then attempted to explain to the customer why she was not really entitled to the discount. The incident occurred in the presence of her supervisor who did not intervene.

Money sought unemployment benefits. A Job Service representative determined Montgomery Ward did not furnish sufficient evidence of misconduct, and awarded her benefits. After an administrative hearing, an administrative law judge (ALJ) reversed. The ALJ found Money knew of Montgomery Ward's dedication to its customer satisfaction policy and concluded Money's conduct on September 18, constituted a knowing and willful disregard of her employer's interest. The Employment Appeal Board affirmed the ALJ.

Money filed a petition for judicial review. The district court found Money's actions were not based on any willful or wanton disregard of the employer's interest, but showed only inefficiency, unsatisfactory conduct, and

failure in good performance. The court reversed the board because it did not find substantial evidence of misconduct. Montgomery Ward now appeals. The board did not file a separate notice of appeal, but it joins in the arguments of Montgomery Ward.

Montgomery Ward claims there was substantial evidence in the record to support a finding of misconduct. It points out several past acts of misconduct by Money which it believes should be considered in determining the magnitude of her conduct on September 18. These past acts include other incidents of rudeness, dress code violations, tardiness, and absenteeism.

Our scope of review was well set out in Henry v. Iowa Dep't of Transp., M.V.D., 426 N.W.2d 383, 385 (Iowa 1988):

> In reviewing a district court decision on the validity of an agency action, we decide only whether the district court has correctly applied the law. The district court itself acts in an appellate capacity to correct errors of law on the part of the agency. When we review such action by the district court, we merely apply the standards of section 17A.19(8) to determine whether our conclusions are the same as those of the district court. If the conclusions are the same, we affirm; otherwise we reverse. (Citations omitted.)

The issue in this case is whether the trial court was correct in determining Terry Money's conduct did not rise to the level of "misconduct" as defined in Iowa Administrative Code section 345-4.32(1)(a) in order to justify a denial of unemployment benefits. Misconduct is defined in that section 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 evidencing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards 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, inadvertency or ordinary negligence in isolated instances, or good faith error in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The trial court found the record, when viewed as a whole, did not establish by substantial evidence that Terry Money was guilty of misconduct or even if there was misconduct that it was substantial enough to deny her unemployment benefits We agree.

Misconduct must be substantial in order to deny unemployment benefits. Eaton v. Iowa Dept. of Job Service, 376 N.W. 29 915, 918 (Iowa App. 1985). We find Terry made a good faith effort to simultaneously satisfy the customer while attempting to explain a discount policy of the company to a customer who did not qualify. We affirm the trial court.

**AFFIRMED.**