

IN THE COURT OF APPEALS OF IOWA

No. 9-362 / 88-1799

FILED

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CLERK SUPREME COURT

CHRISTY LYLE,

Petitioner-Appellant,

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vs.

EVENSON CARD SHOPS, INC. and EMPLOYMENT APPEAL BOARD,

Respondents-Appellees.

Appeal from the Iowa District Court for Polk County,
Jack D. Levin, Judge.

Petitioner appeals the decision of the district court which affirmed the Employment Appeal Board's denial of unemployment benefits. Petitioner was discharged for 1) taking items home without first paying for them, 2) failing to maintain a copy of the overring log in her store, and 3) not following the employer's policy with regard to work scheduling. She claims the court erred in finding she had engaged in misconduct. **AFFIRMED.**

Carolyn F. Coleman, Legal Aid Society, Des Moines, for petitioner-appellant.

Blair H. Dewey and William C. Whitten, Employment Appeal Board, for respondents-appellees.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

DANIELSON, P.J.

Petitioner Christy Lyle was employed by Evenson Card Shops, Inc., doing business as Lynn's Hallmark, as a store manager from September 1986 until May 22, 1987. Lyle had managed this store for a previous owner since 1983. When Evenson took over the store Lyle was given a company policy manual and told to be sure to follow it. Lyle was discharged for failing to follow company policy. Evenson alleged Lyle removed items from the store without first paying for them, failed to maintain an overring log in the store, and did not follow company policy regarding work scheduling.

Lyle filed a claim for unemployment compensation. A Job Service representative found she was entitled to benefits because the employer failed to show sufficient evidence of misconduct. Evenson sought a hearing. At the hearing Lyle admitted to the actions alleged by Evenson. She argued her conduct had been permitted by the previous owner of the store, and she did not realize such conduct was no longer permitted. The hearing officer reversed the earlier decision and determined Lyle had been discharged for misconduct. The hearing officer found Evenson's policies were in its employment manual and Lyle should have adhered to them. The Employment Appeal Board and the district court affirmed the decision of the hearing officer.

Lyle now appeals the decision of the district court. She contends her conduct should not be considered misconduct. Lyle left I.O.U.s for the merchandise she took, and she sent the store's overring log to the home office as required, but failed to keep a copy in the store. She contends she worked more weekends than required by her employer's policy. Lyle asserts the employment manual was ambiguous on these points, and she could not deliberately violate policies she did not know existed.

I. Standard of Review. Our scope of review in cases arising out of the Iowa Administrative Procedure Act is limited under Iowa Code section 17A.20 to the correction of errors at law. Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 165 (Iowa 1982). The review function of the district court under section 17A.19 is to correct errors of law which are specified in section 17A.19(8). When we review decisions of the district court which were rendered in its capacity as an appellate body under section 17A.19, the issue for our determination is whether the district court correctly applied the law. Budding v. Iowa Department of Job Service, 337 N.W.2d 219, 221 (Iowa App. 1983). In order to make that determination, we apply the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. Jackson County Public Hospital v. Public Employment Relations Board, 280 N.W.2d 426, 429-30 (Iowa 1979).

II. Misconduct. Iowa Code section 96.5(2) provides that a claimant is disqualified from unemployment benefits "[i]f the department finds that the individual has been discharged for misconduct in connection with the individual's employment." The sole issue before us is whether the department erred in holding that petitioner's conduct constituted misconduct as that term is contemplated under section 96.5(2). We note at the outset that we do not question the employer's right to terminate petitioner's employment. The issue we address relates solely to whether or not petitioner is entitled to unemployment compensation.

Misconduct is defined by 345 Iowa Administrative Code 4.32(1) 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 a 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature.

Huntoon v. Iowa Dept. of Job Service, 275 N.W.2d 445, 448 (Iowa 1979), cert. denied, 444 U.S. 852 (1979).

As the definition suggests, misconduct must be substantial in nature to support a disqualification from unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits. Budding, 337 N.W.2d at 222.

There is substantial evidence in the record to sustain the agency's finding of misconduct. Evidence is substantial if a reasonable mind could accept it as sufficient to reach the same findings. Quenot v. Iowa Dept. of Job Service, 339 N.W.2d 624, 626 (Iowa App. 1983). The record reveals respondent had a policy which prohibited the removal of items from the store without prior payment for the items. Lyle would take items and leave I.O.U.s on the wall near her desk. She allowed other employees to engage in similar conduct. Lyle contends the previous owner of the store condoned this behavior, and no theft or dishonesty resulted from this conduct. Security procedures and rules are important to an employer. A violation of security procedures, even without dishonesty, may constitute misconduct. Henry v. Iowa Dept. of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). Employee disregard of a security rule is of serious concern to an employer. Flesher v. Iowa Dept. of Job Service, 372 N.W.2d

230, 234 (Iowa 1985). Lyle's behavior in taking merchandise and leaving I.O.U.s certainly manifests a deliberate violation or disregard of the standards of behavior which an employer has a right to expect. An employer's interest in an accurate inventory and in an honest work force is jeopardized when the store manager allows employees and herself to take items without first paying for them. Lyle's behavior constituted misconduct in this case.

Lyle's behavior in failing to maintain an overring log in her store, was in contravention of her employer's policy. She also did not comply with the scheduling requirements established by her employer. An employer has the right to expect an employee to follow its directions. Myers v. Iowa Dept. of Job Service, 373 N.W.2d 507, 510 (Iowa App. 1985). While an employer's subjective standards of expectation do not constitute the measure of proof necessary to establish misconduct, Kelly v. Iowa Dept. of Job Service, 386 N.W.2d 552, 555 (Iowa App. 1986), the policies violated by Lyle in this case dealt with security procedures and her scheduled work hours. This court finds substantial evidence existed from which the agency and district court could conclude that Lyle had engaged in misconduct and should be denied unemployment benefits.

AFFIRMED.