

# ARKANSAS COURT OF APPEALS

DIVISION III

No. E12-925

KRISTEN PRICE

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES, and  
COMMERCIAL NATIONAL BANK

APPELLEES

**Opinion Delivered** March 27, 2013

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[2012-BR-01688]

REVERSED AND REMANDED

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**DAVID M. GLOVER, Judge**

Kristen Price appeals from the Board of Review's denial of her unemployment benefits. She worked for approximately five years as a customer-service representative at Commercial National Bank until she was discharged on February 2, 2012, for failing to place a mandatory seven-day hold on a \$9,600 out-of-state check used to open a new account. The check came back for insufficient funds, and the error caused the bank to suffer a \$30,000 loss because there was not a flag to notify other tellers. As part of the same process of opening the account, Price also raised the same customer's debit-card limit without obtaining prior approval. Earlier, the Department of Workforce Services had allowed the benefits, and the Appeal Tribunal affirmed, concluding that Price was discharged for reasons other than misconduct in connection with her work. However, the Board of Review reversed the



Appeal Tribunal's decision, finding that Price was discharged for misconduct. We reverse the Board of Review's decision and remand for an award of benefits.

A person shall be disqualified from receiving unemployment benefits if it is determined that the person was discharged from his or her last work on the basis of misconduct in connection with the work. Ark. Code Ann. § 11-10-514(a)(1) (Supp. 2011). The employer has the burden of proving by a preponderance of the evidence that an employee engaged in misconduct. *Grigsby v. Everett*, 8 Ark. App. 188, 649 S.W.2d 404 (1983). "Misconduct" involves disregard of the employer's interest, violation of the employer's rules, disregard of the standards of behavior the employer has a right to expect of its employees, and disregard of the employee's duties and obligations to the employer. *Garrett v. Dir., Ark. Dep't of Workforce Servs.*, 2013 Ark. App. 113. We have long held, however, that for purposes of unemployment insurance, the definition of misconduct requires more than mere inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity, inadvertencies, ordinary negligence in isolated instances, or good-faith errors in judgment or discretion. *Id.* That is, conduct that may well provide a sufficient basis for the discharge of an employee may not be sufficient to deny that employee unemployment benefits. The two inquiries are entirely different. To conclude that there has been misconduct for unemployment-insurance purposes, we have long required an element of intent: mere good-faith errors in judgment or discretion and unsatisfactory conduct are not misconduct unless they are of such a degree or recurrence as to manifest culpability, wrongful intent, evil design, or intentional disregard of an employer's interest. *Id.*



Here, as a customer-service representative, Price's duties included opening new accounts. She had received training on how to perform her job, including how to deal with a customer's attempt to facilitate a scam on the bank by talking to the customer-service representative to the point of distraction. In addition, the bank's computer software prompted its employees in opening new accounts. Price had held her job for five years, but she had just returned from maternity leave. She acknowledged forgetting to place a hold on the check; she had never made this mistake before in her five-year history with the bank; and she had received no previous disciplinary actions other than once for tardiness.

We review the Board's findings in the light most favorable to the prevailing party and affirm the Board's decision if it is supported by substantial evidence. *Clark v. Dir., Emp't Sec. Dep't*, 83 Ark. App. 308, 126 S.W.3d 728 (2003). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* Even when there is evidence upon which the Board might have reached a different decision, the scope of our review is limited to a determination of whether the Board reasonably could have reached the decision it did based upon the evidence before it. *Id.* Our function on appeal, however, is not merely to rubber stamp decisions arising from the Board. *Id.* We have concluded that the undisputed facts of this case do not support a finding of misconduct. Rather, the evidence demonstrates that Price's conduct amounted to an isolated instance of ordinary negligence or unsatisfactory conduct and that it did not establish wrongful intent or evil design. Accordingly, we reverse the Board's decision and remand for an award of benefits.



Cite as 2013 Ark. App. 205

Reversed and remanded.

PITTMAN and WOOD, JJ., agree.

*Kristen Price*, pro se appellant.

*Phyllis Edwards*, Associate General Counsel for Artee Williams, Director, Dep't of Workforce Servs.