

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DIANNA J STUBBS
100 VINE ST
RUNNELLS IA 50237**

**MURPHY OIL USA INC
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 06A-UI-02959-JTT
OC: 09/04/05 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Murphy Oil USA filed a timely appeal from the March 2, 2006, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held April 3, 2006. Claimant Dianna Stubbs participated. Store Manager Kandy Neer represented the employer. Exhibits Two through Four were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dianna Stubbs was employed by Murphy Oil USA as a part-time cashier at its Altoona gas station from November 7, 2005 until January 24, 2006, when Store Manager Kandy Neer discharged her. The final incident that prompted the discharge occurred on January 23, when a customer drove off without paying for his or her gasoline. Ms. Stubbs was working by herself at the time. The

store was busy, with 16 gasoline pumps in use and 6 or 7 people waiting at the cash register to pay. Ms. Stubbs was expected to use the intercom system to greet each customer who indicated he or she was going to pay with cash, and to authorize the gas pump. However, the intercom system on pump 16 was inoperable. Ms. Stubbs was expected to take down the license plate number, if visible, of customers who indicated they would be paying with cash. The employer can average up to 30 gasoline drive-offs per month.

On the day in question Ms. Stubbs was overwhelmed by the level of business. For some transactions, Ms. Stubbs did not use the cash register, but instead received money and placed it on the counter within the clerk's kiosk. This conduct did not involve any intent to commit theft, but instead involved Ms. Stubbs' inability to keep up with the level of business.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Stubbs was discharged for misconduct in connection with the employment. It does not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). 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 unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record fails to establish misconduct with regard to the January 23 drive-off. Regarding the drive-off, the evidence indicates that Ms. Stubbs was placed in an overwhelming situation and that the employer unreasonably expected her to have a meaningful impact on criminal behavior in the form of gasoline drive-offs. The evidence does establish that Ms. Stubbs was negligent in failing to appropriately use the cash register for customer transactions. However, the evidence establishes only this isolated incident of negligence and, therefore, would not constitute negligence sufficiently recurrent to disqualify Ms. Stubbs for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Stubbs was discharged for no disqualifying reason. Accordingly, Ms. Stubbs is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Stubbs.

DECISION:

The Agency representative's decision dated March 2, 2006, reference 03, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/kkf