

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ROBIN J LAWSON

Claimant

and

MURPHY OIL USA INC

Employer

HEARING NUMBER: 16BUI-09009

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 24.32-7

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Robin Lawson, worked for Murphy Oil USA, Inc. from December 19, 2013 through July 18, 2016 as a full-time assistant manager. (6:09-6:57) As an assistant manager, it is a requirement that the Claimant have a cell phone. (26:40-26:43) To that end, the Employer provided the Claimant with a \$20 monthly stipend to either have a cell phone or put minutes on a phone specifically for work-related issues. (25:44-26:31; 28:00-28:23)

The Employer has an attendance policy, which provides that an employee must contact the manager to inform him of that employee's absence on each day of absence. (10:00-10:41) An employee's failure to report three consecutive days of absences is considered job abandonment, i.e., a voluntary termination. (7:45-7:53; 29:34-29:43; Exhibit A, E-19 of 26) Ms. Lawson, as

assistant manager, had ongoing access to a copy of this policy from the start of her employment.
(7:57-8:03; 29:50-30:13)

During the Claimant's shift on July 14, 2016, Ms. Lawson felt sick and asked Mr. Henze (Store Manager) to leave early. (8:36-8:39; 18:20-18:28) The next day (Friday, the 15th), she did not report to her 11:00 a.m. shift (16:09-16:13); nor did the Employer hear from her regarding her absence. (7:20-7:31; 8:16-8:20; 8:54) Ms. Lawson was a no call/no show for the next two days as well. (7:33-7:41) The Claimant later told the Employer that she told her roommate (Jasmine), who was also an employee there, to tell Mr. Henze she was ill on the 15th and wouldn't be in until she could see a doctor the following Monday. (8:51-9:17; 11:18-11:30; 18:40-18:46; 22:00-22:02) However, Jasmine did not report the Claimant's July 15th absence until approximately 2:30 p.m. when she arrived for her shift on Saturday, July 16th, 2016. (15:45-16:06; 18:40-18:57) At no time did Ms. Lawson personally contact the Employer regarding any of these three absences. (9:22-9:28; 16:30-16:46) The Claimant assumed the Employer knew she wouldn't be at work from July 15th -17th, 2016.

Ms. Lawson had previously been absent three consecutive days back in March of 2016 in which she relied on Jasmine to report her absences on a daily basis (13:59-14:46) for which the Employer issued a verbal warning for failing to properly report her own absences. (17:10-17:21; 17:29-17:36; 22:02-22:04) On July 18, 2016, the Employer terminated Ms. Lawson for violating company policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

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

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

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature.

Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The Employer has an attendance policy for which the Claimant knew or should have known based on her position as an assistant manager. As an assistant manager, it was incumbent upon her to be familiarized with, and to be in compliance with company policies, namely the attendance policy. Even if we were to accept her allegation that she had no knowledge of the attendance policy (20:03-20:15; 20:28-20:40) , the Employer's verbal warning to her back in March should have put her on notice that her job could be in jeopardy for failing to properly report her absences. As an assistant manager, she is held to a higher standard of compliance with company rules than her subordinates. It was not reasonable for her to rely and assume that a co-worker reported her absences, without her doing any type of follow-up.

The court in *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. Here, the Employer clearly states "...If you do not report for your scheduled shift and do not call your team leader, it will be considered job abandonment and you will be terminated..." (Exhibit A, E-19 of 26) We can reasonably presume that 'you' refers to the employee whose is absent and not a co-worker, unless of course, there are extenuating circumstances that would prohibit the absent employee from calling in. The record contains no evidence that Ms. Lawson was incapable of contacting the Employer on her own. Although she impliedly argues that she had no minutes on her cell phone to call in, the Employer counters her argument stating that she was specifically provided a monthly stipend to answer and make phone calls as it related to her employment. Calling the Employer to report absences was certainly within realm of being 'work-related.' Additionally, Ms. Lawson admitted that even having no minutes, she had the capability to text the Employer about her absences; yet she didn't on three occasions. For this reason, we conclude that Ms. Lawson's absences were not properly reported. And the fact that she had three successive unreported absences renders them unexcused and excessive.

In the alternative, the Claimant's separation could be considered a voluntary quit without good cause attributable to the Employer within the meaning of 871 IAC 24.25(4), which provides, "...[t]he claimant was absent for three days without giving notice to employer in violation of

company rule. Based on this record, we conclude that the Employer satisfied its burden of proving its case.

DECISION:

The administrative law judge's decision dated November 21, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

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