

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CYNTHIA M CHICAS
Claimant

APPEAL NO: 17A-UI-10570-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 08/20/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 13, 2017, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 2, 2017. The claimant participated in the hearing. Toni Schmalen, Manager and Annette Hatch, District Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier for Murphy Oil USA from February 3, 2017 to September 15, 2017. She was discharged for theft after she took a customer's gift card September 1, 2017, and made purchases on it.

On September 1, 2017, an elderly customer was having difficulty getting gas and asked Manager Toni Schmalen to help her. Ms. Schmalen was involved in a project so she asked the claimant to help the customer. The claimant helped the customer and used the customer's Wal-Mart gift card to pay for the customer's gas. Before leaving the store the customer realized she did not have her gift card and asked the claimant if she had her gift card and the claimant stated she gave it back to the customer. The customer could not find the gift card which had a balance of over \$200.00 on it. Eventually the customer left without her card. The following day the claimant said she found a gift card outside with a balance of \$233.00 on it. She did not report the situation to the employer or attempt to find the owner of the card, stating even though the elderly customer lost her gift card the day before it "never occurred to her" that gift card she found probably belonged to the customer who lost a gift card. The claimant used the gift card to fill her car with gas at the employer's store. Approximately one week after the claimant came to possess the gift card, the elderly customer's niece stopped in to discuss the matter and the employer stated that if it was a Wal-Mart gift card she could get a print out from Wal-Mart showing any purchases and the locations of those purchases. The customer's niece went to

Wal-Mart and did get a print out and one item showed someone purchasing gas at the claimant's employer's gas station. The employer then watched the video from that date and time around September 10, 2017, and observed the claimant purchasing gas with the customer's gift card. The date and time matched as did the purchase information and gift card number. The customer's niece told the employer the customer's husband was encouraging the customer to call the police but she was hesitant to do so. The employer told the claimant the customer was considering calling the police and the claimant asked for the customer's phone number and called her. She told the customer she would repay the money but the customer stated she did not want the claimant to pay if she did not take the money. The police contacted the employer and planned to meet with the claimant and arrest her at the store September 15, 2017. Instead they were involved in an emergency call and could not go to the store and the employer proceeded with its plan to terminate the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant denies stealing the customer's Wal-Mart gift card, her testimony is not persuasive. She helped a customer September 1, 2017, and that customer was very concerned because she could not find her gift card after the claimant used it to help her get gas. It is not credible for the claimant to state that she found a Wal-Mart gift card on the ground outside the very next day but it never occurred to her that it belonged to the customer who was very upset and missing her card. The claimant also compared keeping this gift card with over \$200.00 on it to situations when customers intentionally leave gift cards containing less than \$1.00 on the employer's counter and the employer keeps them and uses those cards to help customers who may be a few cents short. Additionally, the claimant did not report "finding" the card on the employer's property to the employer.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 13, 2017, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn