

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE G BECKNER
Claimant

APPEAL NO. 14A-UI-00085-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 11/24/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated December 24, 2013, reference 03, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on January 28, 2014. The claimant participated personally. The employer participated by Dusty Brunsting, manager, and Annette Hatch, district manager. The record consists of the testimony of Dusty Brunsting; the testimony of Jamie Beckner; the testimony of Annette Hatch; and Employer's Exhibits 1-10.

ISSUE:

Whether the claimant was discharged for misconduct

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a gas station with a kiosk located in Sioux City, Iowa. The claimant was hired on September 20, 2013, as a cashier. She was hired as a part-time employee but worked full-time hours. Her last day of work was December 5, 2012. She was terminated on December 6, 2012.

The incident that led to the claimant's termination was on December 5, 2012. The claimant had a drive off for gas in the amount of \$20.00. The claimant was busy with customers at the time and did not have an opportunity to see the car that drove off without paying. The second incident was the claimant returned \$20.00 to a customer who was dissatisfied with the products that he or she had purchased. The customer had given the claimant a twenty dollar bill and the claimant returned that bill to the customer. The products were not taken by the customer.

The claimant had been previously warned about missing boxes of candy. The claimant sold three boxes of candy. No candy was taken while she was on duty.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance or negligence in isolated situations. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is insufficient evidence in this record to establish disqualifying misconduct. The findings of fact show how the credibility issues were decided in this case. The employer terminated the claimant because she had a drive off for \$20.00 and failed to look up when it occurred. The claimant credibly testified that she was busy with customers and was unable to see the vehicle that drove off without paying for gas. She was also terminated for returning \$20.00 to a customer who was dissatisfied with his or her purchase. No goods left the store and the claimant simply returned the customer's \$20.00 bill. At best this evidence shows perhaps poor judgment or negligence in an isolated situation, which is not misconduct. There is no evidence of theft or dishonesty on the part of the claimant. Since there is insufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 24, 2013, reference 03, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs