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

**ANDREW T WILLEY**
Claimant

**APPEAL NO. 07A-UI-04282-DWT**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MURPHY OIL USA INC**
Employer

**OC: 03/25/07   R: 03**
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Murphy Oil USA, Inc. (employer) appealed a representative's April 18, 2007 decision (reference 01) that concluded Andrew T. Willey (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2007. The claimant participated in the hearing. Kristin Easton, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 5, 2006. The claimant worked as a part-time cashier. The claimant worked the 4:00 p.m. to 11:00 p.m. or midnight shift.

During the course of his employment, the claimant received several warnings for lack of inventory control. When the claimant started working, he was not trained by a manager. When the claimant received the warnings, it was the first time he learned he had not done something in accordance with the employer's policy. When the claimant worked, he watched customers to make sure they did not take items they did not pay for. The claimant caught several customers trying to take merchandise without paying for it.

On March 21, an older man stopped to buy some items. The claimant was outside sweeping when this individual stopped. While this man was paying for some merchandise, he told the claimant he was looking for a $20.00 bill and kept moving his hands in and out of his pockets. The claimant did not realize this person was stealing merchandise at this time. The claimant continued to help this man look for his $20.00 bill by looking underneath the man's truck and in and around his truck. When the man left, the claimant did not know the man had stolen any

merchandise from the employer. The claimant had not profiled this man as a person who would steal.

On March 23 2007, after Easton completed an inventory control, she discovered $381.00 had been stolen from the employer. After checking the employer's computer records and video tape, she concluded the theft occurred on March 21 during the claimant's shift. Based on the tape, Easton believed the claimant knew the man who took the merchandise and was an accomplice. The employer reported the incident to the police.

When the employer talked to the claimant about this, he denied knowing the older man. The employer discharged the claimant on March 24, 2007 for lack of inventory control or permitting a person to steal from the employer. As of the date of the hearing, the claimant has not been charged or implicated as an accomplice in the theft of the employer's merchandise.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's investigation and conclusions from a security tape, the employer established business reasons for discharging the claimant. Even though the theft of merchandise occurred during the claimant's shift, the facts do not establish that the claimant knowingly allowed an older man to steal from the employer or that he had any idea this was occurring. The facts do not establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's April 18, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of March 25, 2007, the claimant is

qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.


_____
Debra L. Wise
Administrative Law Judge


_____
Decision Dated and Mailed


dlw/css