

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

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Appeal Number: 05A-UI-08218-DWT
OC: 07/25/05 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

STATEMENT OF THE CASE:

Murphy Oil USA, Inc. (employer) appealed a representative's August 5, 2005 decision (reference 01) that concluded Joan M. Freeborn (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 August 25, 2005. The claimant participated in the hearing with her attorney, Charles Crook. Annette Hatch, the district manager, and Matt Bearbower, the store manager, appeared on the employer's behalf. During the hearing, Claimant's Exhibits A through G were offered and admitted evidence. 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 September 9, 2004. The claimant worked as a full-time cashier. Bearbower was the claimant's store manager.

On June 11, 2005, the claimant was injured at work. On July 1, 2005, the claimant's treating physician released the claimant to work four hours a day with additional work restrictions. On July 1, 2005, when the claimant reported to work, she could not immediately record her time on the computer because Bearbower was on the computer. When he finished his work on the computer, five to ten minutes after the claimant was scheduled to work, the claimant entered the necessary information into the computer to indicate she was at work. After working about two hours, the claimant told Bearbower she was in a lot of pain and asked if she could go home early. On July 1, the employer did not deny the claimant's permission to leave work early. The employer only told the claimant that if she went home early, she would not be paid for the hours she did not work as scheduled. Bearbower arranged for the claimant to see her treating physician on July 1.

The claimant saw her treating physician who reduced the claimant's lifting restriction by five pounds and indicated the employer needed to provide the claimant a chair so she could sit at work. The next scheduled visit was July 5 at 3:00 p.m. with a physical therapist. (Claimant's Exhibits A and F).

On July 2, the claimant reported to work as scheduled. The assistant manager gave the claimant permission to leave work about 30 minutes early after the claimant indicated she was in a lot of pain. On July 5, 2005, the claimant reported to work as scheduled at 1:00 p.m. and reminded Bearbower she had a scheduled physical therapy appointment at 3:00 p.m. or during the time she was scheduled to work. When the claimant left for her physical therapy appointment, Bearbower warned the claimant that she needed to work as scheduled.

On July 7, the claimant was scheduled to start work at 7:30 p.m. The employee who was working called her to see if the claimant could come to work early. The claimant was in a lot of pain and indicated she could not come in early and did not know if she would even be able to report to work. The claimant then talked to Bearbower and told him she was in too much pain and could not report to work. Around 8:30 p.m., Hatch contacted the claimant. When Hatch repeatedly reprimanded the claimant for not reporting to work, the claimant indicated she was in too much pain to continue their conversation. Hatch then told the claimant she did not have a job if she did not immediately report to work. The claimant did not report to work.

Even though the claimant did not have any attendance issues prior to her work-related injury, the employer terminated the claimant's employment as of July 7 for failing to report to work and not working as scheduled since July 1.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant's testimony is more credible than Bearbower's testimony as to what happened since July 1. Bearbower testified that on July 5 he called the nurse manager about the claimant's appointments and she verified the claimant did not have an appointment at 3:00 p.m. On July 1, after Bearbower sent the claimant to the treating physician, the Physician's Activity Report (Claimant's Exhibit F) stated the claimant had a physical therapy appointment on July 5 at 3:00 p.m. The claimant gave the employer a copy of this report prior to July 5. Bearbower also testified that the claimant was late on July 1 but he failed to dispute the claimant's testimony that he was using the computer when the claimant came to work so she could not log onto the computer in time. Finally, the employer's characterization that the claimant failed to work as scheduled on July 1, 2 and 5 is an exaggeration. The claimant reported to work these days and the employer gave her authorization to leave work early. It is logical that the first few days the claimant returned to work, even part-time, that she could be extremely sore. The only day the claimant failed to work as scheduled was July 7. However, the claimant gave the employer advance notice that she was unable to work on July 7.

While the evidence indicates the employer became increasingly frustrated with the claimant's medical issues, the facts do not establish that the claimant was able to work as scheduled on July 7. The claimant did not intentionally and substantially disregard the employer's interests. Instead, she was unable to work as scheduled on July 7. On July 1, 2 and 5, the employer gave her permission to leave work early even though it was without pay. The employer may have had compelling business reasons for discharging the claimant. The employer did not establish that the claimant committed work-connected misconduct. Instead, the facts show the claimant was unable to work even four hours after she had been initially released to work part-time hours with various work restrictions. The claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

DECISION:

The representative's August 5, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of July 17, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s