

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMMIE LYNN BERRY-SHELY
Claimant

APPEAL NO: 14A-UI-05599-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 04/27/14
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 15, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the June 24 hearing. Daniel Furlong, the district manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in July 2013. She worked as a part-time cashier. The claimant's job was not in jeopardy prior to April 20, 2014. During the week of April 20, the employer received information from management at the claimant's store that the claimant was making comments about wanting to quit and that some management personnel were not very intelligent. Furlong was told the claimant made negative comments about management to customers and used profanity when she made the comments. Furlong understood the claimant had been making negative comments since new management took over or for about one month. No one in management warned the claimant her job may be in jeopardy if she made the alleged negative comments.

On April 29, when the claimant returned to work after attending her sister's funeral, the employer asked if she had made comments that she wanted to quit. The claimant admitted she made these comments. The employer discharged the claimant for insubordination - making negative comments about management.

The claimant did not talk to customers about any issues she had with management. The claimant did not use profanity while talking to customers. The claimant talked to the new store manager, Nick, about frustrations she had at work with different managers who had been in and out of the store during a short time. When the claimant talked to Nick about frustrations she had

at work, he indicated he understood why she was frustrated. The only negative comment the claimant recalled she made occurred on April 19. On that day an assistant manager asked the claimant to train or teach her how to do something. The claimant told the assistant manager that it was not her duty to teach the assistant manager's job to her.

The claimant established a claim for benefits during the week of April 27, 2014. She filed claims for the weeks ending May 10 and 17. She received her maximum weekly benefit amount of \$114 for each of these weeks.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Based on information Furlong received from employees who did not testify at the hearing, he concluded the claimant had been insubordinate. Since these employees did not testify at the hearing, the employer's reliance on unsupported hearsay information cannot be given as much weight as the claimant's credible testimony at the June 24 hearing. Based on the evidence presented at the hearing, the claimant told co-workers, not customers, that she wanted to quit. She did not use profanity when talking to customers and she did not make negative comments about anyone in management to co-workers or customers. The evidence does not establish that the claimant committed work-connected misconduct. As of April 27, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's May 15, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 27, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css