

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TOMA F TREADWELL
Claimant

APPEAL NO. 18A-UI-01054-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 12/17/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Murphy Oil USA (employer) appealed a representative's January 18, 2018, decision (reference 01) that concluded Toma Treadwell (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 16, 2018. The claimant participated personally. The employer participated by Toni Schmalen, Manager, and Megan Hesse, Assistant Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 14, 2017, as a part-time cashier. The claimant signed for receipt of the employer's online handbook when she was hired. The claimant worked alone in a kiosk that was approximately six feet by three feet. She was not allowed to sit down. If she wanted a break, she could go to the restroom a few doors away. She could also sit outside on a curb.

On November 26, 2017, the claimant worked nine hours from 2:00 p.m. to 11:00 p.m. It was cold in the kiosk. She wore her jacket over her cross body purse with the bag to her back. This was not against the employer's policies. The register posted messages telling the claimant to make safe deposits during her shift. The claimant put the specified amount of money in an envelope, put the envelope in the safe, and noted the drop on a paper beside the register.

On November 27, 2017, the employer contacted the claimant and asked what happened to drop number three. The claimant and the employer watched the recording of the drop. They saw the claimant make the drop but the envelope was not in the safe. The two noticed that the claimant's purse was behind her. The recording did not show the claimant putting money into her purse or taking the money. The employer told the claimant that if she could not provide the

missing money, she was terminated. The employer terminated the claimant on November 27, 2017.

The claimant filed for unemployment insurance benefits with an effective date of December 17, 2017. The employer participated personally at the fact finding interview on January 17, 2018, by Toni Schmalen and Megan Hesse.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. It could not provide any policy the claimant violated. The claimant put the

envelopes in the safe. The employer knew this when it watched the recording with the claimant and when it spoke with the fact finder. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 18, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs