

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA L KNAPP
Claimant

APPEAL NO. 13A-UI-00215-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 02/19/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 31, 2012, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 8, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Daniel Furlong participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an assistant manager from March 3, 2012, to December 2, 2012. She was informed and understood that under the employer's work rules, a verbal warning is issued for cash shortages of \$5 to \$9.99, a written warning for shortages of \$10 to \$24.99, and dismissal is possible for more than \$25. The claimant received a written warning on April 7, 2012, for having a \$19.31 cash shortage on her shift.

Employees are required to drop money in envelopes, normally in \$200 increments, into the safe to minimize the amount of money in the cash register. Management employees are the only employees with access to the safe. The claimant was informed and understood that when the cash register runs low on money to make change, the process is to take a loan against the safe, which involves an automated process where pre-filled tubes of bills or coins are dispensed from the safe and a receipt is created to show that money has been taken from the safe and put in the register.

As part of her job responsibilities, she was required to prepare the bank deposit for the previous day's receipts. The envelopes for each shift are sorted and the money in the envelopes for each shift is counted to determine if the money is short or over, based on the shift end reports. The claimant did this process while waiting on customers. Early in the morning, a customer came in with a \$70 winning lottery ticket. There was not enough cash in the register to pay the customer so the claimant took \$70 out of a deposit envelope from her shift the previous day with

the idea of returning the \$70 when the cash register had sufficient funds. Later the claimant put the \$70 back into the envelope. She did this because the store manager had said that if someone paid with a \$100 bill and there was not enough money in the register to make change that money could be taken from an envelope instead of doing a safe loan as long as the money was put back.

As she was counting the money for each shift, she found an empty envelope from the other assistant manager's shift the previous day and determined the shift was \$96 short. The assistant manager had reported in her daily paperwork about a \$20 shortage. The claimant called the assistant manager who came in to assist the claimant in recounting the money to see if discrepancy could be accounted for, but the money could not be found. Then the claimant called the store manager who also came in and help recount the money but the \$96 could not be accounted for.

The store manager and district manager viewed video surveillance for the morning of December 2, 2012, and witnessed the claimant taking envelopes in and out of the safe and making change using a deposit envelope.

On December 7, 2012, the claimant was discharged for not following cash handling policies and because there was a shortage the employer felt the claimant was responsible for.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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 employer has not met its burden of proving willful and substantial misconduct by the claimant. The employer has not shown that the claimant was responsible for the shortage. The video was not offered into evidence. The claimant insists she cashed a winning lottery ticket

with money from a deposit envelope and restored the money with money from the register and that the store manager had approved similar conduct bypassing the loan against the safe policy. I find the claimant testimony credible. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated December 31, 2012, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs