

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA MINNAERT
Claimant

APPEAL NO. 10A-UI-09199-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 05/23/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's June 17, 2010 decision (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 non-disqualifying reasons. A telephone hearing was held on August 12, 2010. The claimant participated in the hearing. Dan Furlong, the district manager and the claimant's supervisor, 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 in May 2006. Prior to her employment separation, the claimant worked as a full-time store manager. The employer requires store managers to work five days a week. Three of these days, the manager must work 8 a.m. to 5 p.m. During her employment, the claimant left the store to run work related-errands before 5 p.m. On these days the claimant called the store at 5 p.m. or shortly after 5 p.m. and asked an employee to clock her out. The claimant gave an employee her pass code so the employee could clock out the claimant.

Prior to her employment separation, the claimant talked to Furlong about having to work too many hours. Furlong started questioning how much time the claimant actually worked because of the number of hours her hourly employees worked.

On May 21, 2010, Furlong watched the security tapes for the weeks of May 10 and 17, 2010. He observed during each of these weeks there were two days the claimant left the store around 3 p.m., did not return to the store, and was clocked out at 5 p.m. or shortly after 5 p.m. A store employee verified that the claimant called around 5 p.m. these days and asked employees to clock her out when she was not at the store. The employee informed the employer that the claimant had been doing this for quite a while. On May 24, Furlong discharged the claimant for

asking an employee to clock her out at work when she was not at the store and gave employees her pass code to do this.

The employer concluded the claimant reported she worked hours she had not worked. The employer did not check out what, if anything, the claimant had been doing when she left the store before 3 p.m. The employer considered the claimant to have committed fraud by reporting hours she had not worked. The employer also considered the claimant to have violated the employer's policy by giving out her manager's pass code to employees she supervised and failing to work until 5 p.m. three out of the five days she was scheduled to work. Although prior to May 24 the claimant's job was not in jeopardy, the employer discharged her on May 24, 2010.

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 claimant asserted she had no idea asking employees to clock her out when she was not at the store was a problem when she was out of the store for work-related reasons. If the claimant was out of the store from 3 to 5 p.m. on work-related business or errands, she did not commit fraud. The employer's assertion that it is very difficult to verify whether the claimant was out of the store for work-related reasons is true. In this case, however, the employer did not attempt to find out what the claimant was doing when she left the store before 3 p.m. the four days she did this from May 17 through 28, 2010. The employer does not have a rule prohibiting employees from clocking out other employees. While the claimant did not recognize any problems with doing this, she used poor judgment when she asked employees she supervised to clock her out. As a manager, the claimant should have recognized how difficult it would be for the employer to determine if she was working or not working when she was not at the store. Since the claimant was expected to do work outside the store, go to the bank, make gas surveys, purchase supplies for the store, and had been doing this for quite a while, the facts do not establish that she intentionally disregarded the employer's interests or that she was not performing work-related tasks when she was not at the store. The claimant used poor judgment when she gave employees her pass code to check her out, but the facts do not establish that this created any substantial harm.

The employer had business reasons for discharging the claimant. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of May 23, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's June 17, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the facts do not establish that she committed work-connected misconduct. As of May 23, 2010, 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/kjw