

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY J JENNINGS

Claimant

APPEAL NO. 11A-UI-08586-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC

Employer

OC: 05-29-11

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 21, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 12, 2011. The claimant did participate. The employer did participate through Christine VanSteenwyk, Store Manager.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a head cashier part time beginning June 4, 2009 through May 30, 2011 when she was discharged. When a cashier comes on duty in the kiosk, they are required to count all of the cigarettes to insure that none are missing. On May 20 the claimant arrived at work and counted her cigarettes accurately. When she completed her shift, the employer discovered that an entire carton, ten packs, of cigarettes was missing and unaccounted for. The claimant had been warned on two prior occasions, April 12 and May 6 that her inventory was short and that any further shortages could lead to her discharge. The claimant had no explanation for why the cigarettes were missing. The claimant went on vacation beginning on May 21, 2011 and did not return until May 30, at which time she was told she was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew that it was her job to keep the inventory safe and she did not do so. As she was inside the kiosk away from customers she had control of the work environment. She had been warned twice before for the same conduct. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The June 21, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css