

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATRINA A SCHULTZ
Claimant

APPEAL NO. 15A-UI-09332-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 06/28/15
Claimant: Respondent (1)

871 IAC 23.43(9)a – Combined Wage Claim Transfer of Wages
Iowa Code Section 96.5(2) – Discharge for Misconduct

STATEMENT OF THE CASE:

Murphy Oil USA (employer) appealed a representative's August 13, 2015 decision (reference 03) that allowed benefits and charged employer's account for the combined wage claim of Katrina Schultz (claimant). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 4, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Carolyn Thornburg, Store Manager.

ISSUE:

The issue is whether employer can be relieved of benefit charges on the combined wage claim.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time cashier from August 24 through 31, 2014. The claimant was trained for three days on the cash register and then worked alone for three days on the register. After the first day she was alone on the register, the employer noticed cash shortages. The store manager told her to bring them into line. The claimant had cash shortages on the next two days. The employer believed the claimant was trying not to have shortages. The employer terminated the claimant on September 1, 2015.

Claimant has a cross wage claim with Illinois but earned wages from this employer in Iowa.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment due to job-related misconduct.

Iowa Code section 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.

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 connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of her lack of training or her ability to comprehend the task. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

Iowa Admin. Code r. 871-23.43(9) provides, in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are

sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

The employer's account is chargeable based up on this separation.

DECISION:

The August 13, 2015, reference 03, decision is affirmed. The claimant was not discharged from employment due to job-related misconduct. Employer's Iowa account number 300586-000 shall be charged as the separation would not be disqualifying in the State of Iowa.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css