

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM J BACAN
Claimant

APPEAL NO. 07A-UI-08871-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 07/22/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Murphy Oil USA, Inc. (employer) appealed a representative's September 7, 2007 decision (reference 02) that concluded Tim J. Bacan (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2007. The claimant participated in the hearing. Annette Hatch, the district manager, and Bruce Pederson, the manager, 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 on October 1, 2005. When the employer hired the claimant, the employer only did background checks on management personnel. The employer hired the claimant to work as a part-time maintenance employee.

When the employer could not find a record of the claimant's October 2005 employment application, the employer asked him to complete another employment application form in October 2006. The claimant filled out another employment application in October 2006.

The employer's corporate office decided to run background checks on all employees. It is not known when the employer made this decision. The claimant's background check revealed he had been convicted of a felony 15 years ago. The employer was told the claimant had at least two felony convictions before he began working for the employer. It is not known when the employer received the background check information.

Although the claimant may have reported he had been convicted of a felony on his October 2005 employment application, the employer asserted the claimant did not report these

convictions when he completed another employment application form in October 2006. Prior to August 1, 2007, the claimant's job was not in jeopardy. Based on the background check, the employer decided to discharge the claimant because he had not reported these convictions on a duplicate October 2006 employment application.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 employer discharged the claimant because he may not have accurately reported on a duplicate October 2006 employment application form that he had been convicted of a felony 15 years before he began working for the employer. The claimant had already been working for a year when he completed the duplicate application form. The claimant asserted he had accurately reported the convictions when he initially applied and there is no evidence to the contrary. The facts do not establish that the claimant falsified his employment application. Therefore, he did not commit work-connected misconduct. As of July 22, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 7, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of July 22, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he

meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css