

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TARA D HARDMAN**  
Claimant

**APPEAL NO. 12A-UI-13391-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MURPHY OIL USA INC**  
Employer

**OC: 09/30/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Murphy Oil USA (employer) appealed a representative's October 29, 2012 decision (reference 03) that concluded Tara Hardman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 10, 2012. The claimant participated personally. The employer participated by Daniel Furlong, District Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 5, 2012, and at the end of her employment she was working as a full-time cashier. The claimant signed for receipt of the employer's handbook. The employer employs a third party vendor to conduct a compliance shopping program for age restricted products. The handbook indicates that an employee can be terminated for selling age restricted products to this "mystery shopper" twice without asking for identification. The employer also indicates that employees can be reprimanded for not "up selling" tobacco products or products on which the company is running a special.

On August 23, 2012, the employer issued the claimant a warning for not up selling products to a mystery shopper. The employer notified the claimant that further infractions could result in termination from employment. On September 5, 2012, an unknown mystery shopper told the employer that the claimant sold it an unknown tobacco product at an unknown time. The employer has no report of the specifics or the mystery shopper's age. The employer's handbook indicates that an employee will be terminated for two occurrences. On October 2, 2012, the employer terminated the claimant. The claimant has no recollection of this.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

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.

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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. In addition, the employer's handbook indicates that employees will be terminated after two violations. The claimant was terminated after one violation of selling to the mystery shopper without requesting identification. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's October 29, 2012 decision (reference 03) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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