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

**KAYLA C NICHOLS**
Claimant

**APPEAL NO. 09A-UI-11863-H2T**

**ADMINISTRATIVE LAW JUDGE**
**DECISION**

**MURPHY OIL USA INC**
Employer

**OC: 07-19-09**
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 13, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 2, 2009. The claimant did participate. The employer did not participate.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier part time beginning January 28, 2008 through July 17, 2009 when she was discharged.

On July 16 the claimant arrived for work and found taped to a wall a write-up accusing her of leaving the doors to the store open when she closed up on July 12. The write up was available for all employees to see and had not been discussed with the claimant prior to being posted on the wall. The claimant did not agree with the allegations in the write up and wanted to discuss it with the manager Ethan Seamon. She called Mr. Seamon and told him she did not think it was appropriate for him to post her disciplinary warning where all other employees could see it and she did not think it was appropriate for him to not even discuss the situation with her prior to writing her up. The claimant asked to see surveillance tape showing that she had failed to lock the doors. Mr. Seamon told her he would show her the tapes but he never did. The claimant sent an e-mail to the corporate office complaining about how she was treated by Mr. Seamon and how she felt he inappropriately handled her discipline. She was fired by Mr. Seamon the next day for "stirring up trouble."

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant was entitled to complain to corporate about how her discipline was handled by Mr. Seamon. Mr. Seamon's discharge of the claimant was retaliation for her complaint about him. The claimant's complaint was not misconduct. She was trying to discuss how Mr. Seamon had handled her write up in such a public manner. The employer has not met the burden of proof to establish that claimant

acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

**DECISION:**

The August 13, 2009, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.


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Teresa K. Hillary
Administrative Law Judge


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Decision Dated and Mailed


tkh/pjs