

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY A COX
Claimant

APPEAL NO: 06A-UI-08373-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 07/23/06 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Murphy Oil USA (employer) appealed a representative's August 11, 2006 decision (reference 01) that concluded Jody Cox (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 held on September 6, 2006. The claimant participated personally. The employer participated by Troy Winger, District Manager. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct and, therefore, not eligible to receive unemployment insurance benefits.

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 August 10, 2004, as a full-time store manager. The claimant worked without incident until she took time off due to an illness. After returning the claimant received a warning on March 25, 2005, for shrinkage and poor store appearance. On February 22, 2006, the employer issued the claimant a written warning for shrinkage. On March 31, 2006, the employer issued the claimant a written warning for failure to maintain the proper files for the inspector. On June 21, 2006, the employer issued the claimant a written warning for shrinkage and poor store appearance. The employer warned the claimant that further infractions within thirty days would result in her termination from employment. The claimant was working to improve the store appearance by restocking frequently and seeking help from the employer on replacing gas pumps and gas pump parts.

On July 23, 2006, the employer inspected the store and gave it an acceptable rating. Within the hour the employer terminated the claimant for shrinkage and poor store appearance.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes she 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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). 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 sufficient evidence of intent at the hearing. The claimant was trying to the best of her ability to perform the functions of the job. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 11, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs