

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER M BRUNSTING
Claimant

APPEAL NO. 12A-UI-05211-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 04/01/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Murphy Oil USA, Inc. filed a timely appeal from a representative's decision dated April 24, 2012, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 29, 2012. Claimant participated. The employer participated by Mr. Dusty Brunsting, Facility Manager, and Ms. Annette Hatch, District Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Amber Brunsting began employment with Murphy Oil USA, Inc. on July 8, 2010. Ms. Brunsting worked as a full-time cashier and was paid by the hour. Her immediate supervisor was her uncle, Dusty Brunsting. Ms. Brunsting left on approved maternity leave on March 15, 2012. On March 26, 2012, the claimant was discharged from employment when the company determined that Ms. Brunsting was in violation of the company's nepotism policy.

At the time that Ms. Brunsting was hired by Murphy Oil USA, Inc., the company did not have a nepotism policy in place. At the time that the policy was implemented by the company, the claimant nor the facility manager, her uncle, were aware of the policy change. Claimant, therefore, was allowed to continue in employment until it was later determined that she was in violation of the company policy when the company noted that both her and her uncle who was the manager of the facility had the same street address.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes the claimant was discharged for intentional, disqualifying misconduct. It does not.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence establishes that Ms. Brunsting was not intentionally in violation of the company's nepotism policy. The nepotism policy was not in place when Ms. Brunsting was hired by the company and the claimant engaged in no intentional, disqualifying misconduct during the time that she was employed by the company. When the company determined that the claimant was in violation of the nepotism policy because her uncle was the facility manager and the claimant and her uncle reside at the same street address, the claimant was discharged from employment.

While the decision to terminate Ms. Brunsting may have been a sound business decision based upon the company's new nepotism policy, the evidence in the record does not establish disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated April 24, 2012, reference 02, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs