

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA D BLOOM
Claimant

APPEAL NO. 12A-UI-11186-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 01/29/12
Claimant: Respondent (1/R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Murphy Oil USA (employer) appealed a representative's September 7, 2012 decision (reference 03) that concluded Kayla Bloom (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 October 11, 2012. The claimant participated personally. The employer participated by Sandra Prather, store manager.

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 having considered all of the evidence in the record, finds that: The claimant was hired on May 29, 2012, as a part-time cashier. She was normally not scheduled to work on Tuesdays and Wednesdays. The employer has a handbook, but the claimant was not given a copy. The claimant worked in a kiosk located near eight gasoline pumps. If a customer wanted to pay with cash, she was to exit the kiosk and write down the license plate number, even if it meant leaving other customers. On August 17, 2012, the employer issued the claimant a written warning for failure to write down the license number of a vehicle that got gasoline but did not pay.

The claimant told the employer her last day of work would be August 23, 2012. The claimant's mother was to have surgery out of town on August 24, 2012. The claimant planned to be gone for two or three weeks. The employer told the claimant she might not be able to keep her job because of the long absence but she should return when she could and reapply.

The claimant last worked on August 20, 2012. She was supposed to work on August 21, 2012, after a last-minute schedule change. The claimant texted the employer at 1:00 a.m. on August 21, 2012, indicating she could not work that day. The claimant had requested two days off in the past and had always gotten approval from the employer. At 10:00 a.m. the two spoke. The employer told the claimant that if she did not work on August 21, 2012, the claimant would be terminated. The claimant did not appear and she was terminated.

The claimant reopened her claim for benefits effective August 19, 2012. The claimant went out of town to be with her mother. She returned on September 4, 2012.

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. One day of unexcused absenteeism is not excessive. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The issue of whether the claimant is able and available for work as of August 19, 2012, is remanded for determination.

DECISION:

The representative's September 7, 2012 decision (reference 03) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed. The issue of whether the claimant is able and available for work as of August 19, 2012, is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw