

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER J FREDERICK
Claimant

APPEAL NO. 12A-UI-13680-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 10/14/12
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 November 2, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits . After due notice was provided, a telephone hearing was held on December 17, 2012. Claimant participated. The employer participated by Mr. Daniel Furlong, District Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jennifer Frederick was employed by Murphy Oil USA from March 2006 until October 17, 2012 when she was discharged from employment. Ms. Frederick most recently was employed as a full-time store manager at the employer's Bondurant, Iowa location. Ms. Frederick had been at that job location for approximately one month before being discharged.

When Ms. Frederick assumed the position of store manager for the Bondurant, Iowa facility she was specifically informed by the previous store manager that a few designated company repeat customers were not required to have their checks run through Murphy Oil USA's third-party provider electronic apparatus to verify checks. The claimant was told that the few designated companies would often purchase gasoline on more than one occasion per day and that the check verification system would not validate for future sales that day if the company had already had more than one or two checks validated the same day. It was the claimant's belief that that rule had also been verified to her by the company's district manager.

On September 28, 2012 Ms. Frederick was suspended for a one-week period because some of the checks to one of the specified companies had come back as having insufficient funds. Ms. Frederick accepted the suspension because she wanted to continue her employment with the company.

The claimant was allowed to return to work and to continue working until October 17, 2012 when she was discharged because additional checks that had been presented to the company prior to the claimant's suspension had later come in as insufficient fund checks. Ms. Frederick had not allowed any further check transactions to occur without the company's "Certegy" third-party verification system being used.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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. Conduct 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. App. 1992).

In this matter the claimant was acting upon specific instructions given to her by at least one management official of Murphy Oil USA that specifically instructed Ms. Frederick that she should not use the company's check verification system to verify checks written to the company by a very few specific company clients. The reason given to Ms. Frederick was that repeated verifications of purchases on the same day would result in the system falsely indicating the checks were not negotiable and was informed that the company had no problems with the purchases by the select clients and that the company desired that repetitive gas purchases from the clients to continue. Although the claimant followed the rule, she was nonetheless was suspended when some of the checks from one of the specified clients came back as insufficient funds. The claimant served her suspension and was allowed to return to work for a substantial period of time and then was discharged on October 17, 2012 although she had not allowed any further checks to be negotiated by Murphy Oil USA without using the company's check verification system.

The administrative law judge concludes based upon the evidence in the record that the claimant did not engage in intentional misconduct as she was following specific instructions that had been given to her by management prior to her suspension and that the claimant engaged in no acts of misconduct after she was allowed to return to work. The evidence in the record does not establish a current act of misconduct sufficient to deny unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 12, 2012, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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