

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MINDY JORGENSEN
Claimant

APPEAL NO. 14A-UI-11196-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 07/20/14
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 22, 2014, reference 04, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 18, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Daniel Furlong participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a convenience store cashier from August 21, 2014, to September 23, 2014. The claimant was informed that under the employer's work rules, employees were prohibited from writing personal checks at the store where they worked for any reason on or off the clock. This applied to paying for gas or merchandise with a personal check.

The claimant violated the policy in September 2014 when she purchased \$75 in gas and merchandise and paid for it with a personal check. The manager discovered this after the check was returned from the bank for insufficient funds later in September. On September 25, 2014, the employer discharged the claimant for willful violation of the policy.

The claimant filed for and received a total of \$1,715 in unemployment insurance benefits for the weeks between October 5 and November 22, 2014.

Summer Edmonds was listed on the protest as the person to participate in the fact-finding interview which was scheduled for October 21, 2014. The interviewer called the number for Edmonds at the time of the interview but she was not available to participate. The interviewer let the phone ring 10 times. The interviewer determined the employer failed to participate in the interview.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law generally requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. But a claimant is not required to repay an overpayment when an initial decision to award benefits on an employment-separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,715 in benefits.

Because the claimant did not receive benefits due to fraud and willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account will not be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated October 22, 2014, reference 04, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,715 in benefits, but is not required to repay the overpayment due to the employer's failure to participate in the fact-finding interview. The employer's account is not chargeable on this claim.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs