

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN G BROWN
Claimant

APPEAL NO. 13A-UI-01417-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 01/06/13
Claimant: Respondent (1)**

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The employer, Murphy Oil USA, Inc. (Murphy), filed an appeal from a decision dated January 29, 2013, reference 01. The decision allowed benefits to the claimant, Megan Brown. After due notice was issued a hearing was held by telephone conference call on March 6, 2013. The claimant participated on her own behalf. The employer participated by Manager Missy Carey and District Manager Annette Hatch.

ISSUE:

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

FINDINGS OF FACT:

Megan Brown was employed by Murphy from January 19, 2011 until January 4, 2013 as a full-time assistant manager. The company policy requires employees to request identification from anyone purchasing tobacco if they “look under 40 years of age.” The employer has hired a third-party business to provide “mystery shoppers” to go into the stores and purchase tobacco to make sure the clerks are requesting identification.

On August 31, 2012, Ms. Brown failed one of the mystery shopper tests and did not ask for identification. Under company policy she was given a written warning and notified that if she failed another such test in the next 12-month period she would be fired.

On January 4, 2013, Store Manager Missy Carey received notification from the corporate office Ms. Brown had again failed a mystery shopper test and was to be discharged. When Ms. Carey informed the claimant she vehemently denied the charge, stating she had been very careful to ask for identification as required ever since receiving the warning in August 2012. She spoke with District Manager Annette Hatch who could only confirm what the corporate office had told her, that Ms. Brown had failed the test.

Neither Ms. Hatch nor Ms. Carey viewed the available video surveillance footage as that would reveal the identity of the mystery shopper and each of them occasionally serve as clerks in some of the stores.

REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the claimant has denied failing to ask for identification from the mystery shopper. Neither the store manager or the district manager has any personal knowledge of the event and did not confirm the allegation by the corporate office by viewing the relevant video footage.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of January 29, 2013, reference 01, is affirmed. Megan Brown is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs