

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**GLENDA L SCHMIDT
1103 GRANT ST
BETTENDORF IA 52722**

**MURPHY OIL USA INC
% SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 04A-UI-08238-CT
OC: 06/27/04 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Murphy Oil USA, Inc. (Murphy) filed an appeal from a representative's decision dated July 21, 2004, reference 01, which held that no disqualification would be imposed regarding Glenda Schmidt's separation from employment. After due notice was issued, a hearing was held by telephone on August 23, 2004. Ms. Schmidt participated personally. The employer participated by Bart Gosnell, District Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Schmidt was employed by Murphy from October 29, 2002 until April 29, 2004. She was last employed full time as store manager, a position she had held since March 2003. She was discharged from the employment. During the course of each shift, employees are required to drop excess cash in the store's safe. The drops are to be made in \$100.00 increments and are to be placed in numbered envelopes. The numbering begins with "1" each day and each envelope is to be numbered sequentially.

On September 29, 2003, a theft of approximately \$800.00 occurred at Ms. Schmidt's store. Several drops into the safe were missing from the third shift, which was not the shift Ms. Schmidt worked. It was discovered that the video surveillance system was not in operation. Ms. Schmidt was directed to check the system on a daily basis to make sure it was working. On April 7, \$1,500.00 was missing in drops from Ms. Schmidt's shift. She had opened the store that day and had worked the shift alone. The envelopes numbered "1" through "15" were missing. All of the envelopes were from Ms. Schmidt's shift. The employer checked the surveillance camera and determined that it was not working and had not worked for approximately one month. It takes from 2 to a maximum of 15 minutes to check the surveillance system. The camera covers the cash register and the area containing the safe.

Ms. Schmidt volunteered to take a polygraph test and the employer arranged for the local police to administer it. The police notified the employer that Ms. Schmidt had failed the polygraph and that a warrant was going to be issued for her arrest. As of the date of the hearing, Ms. Schmidt had not been contacted by local law enforcement regarding possible charges. After the results of the polygraph were obtained, Ms. Schmidt was discharged on April 29, 2004.

Ms. Schmidt has received a total of \$2,100.00 in job insurance benefits since filing her claim effective June 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Schmidt was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The decision to discharge Ms. Schmidt was based on the fact that \$1,500.00 from her shift was missing from the store. There is no evidence that she stole the money. The fact that she may have failed the polygraph test does not establish her culpability regarding the missing money. The administrative law judge does not have information as to what specific questions were asked during the examination or what questions she was considered to have given false information on. In short, the employer failed to establish that Ms. Schmidt was guilty of theft.

Ms. Schmidt was, as manager, responsible for safeguarding the employer's assets. After money was missing in September 2003, she was admonished to check the surveillance camera on a daily basis to make sure it was operational. She failed to do this. Had the surveillance tape been working on April 7, the employer may have been able to determine who was responsible for the missing money. The employer's review of the system indicated it had not been working for several weeks. Given the fact that the system had not been in operation during a prior theft, it should have been more of a priority for Ms. Schmidt to check the system

on a daily basis. She knew how to check the system and who to call if there were problems. It usually took no more than 2 to 3 minutes to check the system to make sure it was working. At most, it would have taken 10 to 15 minutes. Ms. Schmidt's failure to take required steps to protect the employer's assets constituted a substantial disregard of the standards the employer had the right to expect.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied. Ms. Schmidt has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated July 21, 2004, reference 01, is hereby reversed. Ms. Schmidt was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Schmidt has been overpaid \$2,100.00 in job insurance benefits.

cfc/kjf