

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

MARJIE E NOVAK
1996 E 8TH ST N
NEWTON IA 50208

MURPHY OIL USA INC
C/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-09695-HT
OC: 08/10/03 R: 02
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

STATEMENT OF THE CASE:

The employer, Murphy Oil USA, Inc. (Murphy), filed an appeal from a decision dated August 24, 2004, reference 04. The decision allowed benefits to the claimant, Marjie Novak. After due notice was issued a hearing was held by telephone conference call on September 30, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Manager Kandy Neer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marjie Novak was employed by Murphy from April 16

until August 2, 2004. She was a part-time cashier. At the beginning of her employment she was trained in her duties, given the employee handbook and the store manual. Company policy allows a cashier to be "off" on inventory or cash \$2.00 without any disciplinary consequences. Any amount over that is subject to warnings.

Ms. Novak was short on inventory and cash, as well as having some gas "drive offs" at the beginning of her employment. Manager Kandy Neer attempted to increase her skills and tried out several techniques of improving her performance. The problem continued and the claimant was issued a written warning on June 27, 2004, for cash, cigarette, grocery and soda pop shortages. A second written warning was issued on July 1, 2004, for the same problem. That warning notified her that her job was in jeopardy.

The claimant was short again on July 26, as well as July 29, 2004, when she also had a \$25.00 gas drive off. When the manager audited the reports she discovered these shortages and notified the claimant on August 2, 2004, she was discharged.

Marjie Novak filed an additional claim with an effective date of August 1, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was properly trained on the company policies and procedures. She was given additional training by the manager and different techniques to address the problems of shortages and gas drive offs. None of these were effective and the claimant continued to lose company assets. The claimant did not participate to establish why the problems continued to occur and what she did to resolve them. From the record it appears she was inattentive to her duties and the immediate environment to prevent the shortages and the drive offs. This is conduct not in the best interests of the employer and she is disqualified.

DECISION:

The representative's decision of August 24, 2004, reference 04, is reversed. Marjie Novak is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/b