

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY DALE
Claimant

APPEAL NO: 06A-UI-10125-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 09-10-06 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 12, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 31, 2006. The claimant participated in the hearing. Robin Dutcher, Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cashier for Murphy Oil from October 2005 to August 28, 2006. The claimant was charged with domestic assault while on medical leave and pled guilty July 14, 2006. He was sentenced to serve two days in jail. He asked the employer if he could have July 14 and July 15, 2006, off work to serve his jail time and his request was granted. On July 16, 2006, the claimant returned to work and stated his jail time was postponed. He asked the employer if he could have August 25 and 26, 2006, off to serve his jail time and the employer again granted his request. On August 26, 2006, he told the employer he did not serve his jail time as scheduled and a warrant had been issued for his arrest and he was going to turn himself in. On August 28, 2006, he called the employer and said he had not turned himself in or served his jail time and the employer terminated his employment for taking time off from work to serve his required jail time and not doing so and because he had a warrant out for his arrest and could not be the only employee working in case the police came and arrested him. The claimant testified he was not allowed to serve his jail time because he was ill and the jail would not allow him to serve his time and that he learned after the termination that there was not a warrant out for him. He did work full-time without calling in sick between July 15 and August 28, 2006.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While the claimant has a medical condition, he asked the employer for four days off to serve his jail time but failed to do so on either occasion. The administrative law judge may believe that he was turned away from the jail on one occasion but it is difficult to believe that he was turned away twice because of a medical condition when he was able to work full-time during that same time period. Additionally, when he learned he could not serve his time he did not advise the employer he was able to work those days. Finally, if the claimant had been turned away by the jail from serving his time August 25 and 26, 2006, it does not seem reasonable that he would then believe he had a warrant out for his arrest because that would only occur if he failed to present himself for his two days of incarceration. The employer accommodated the claimant's jail schedule a total of four days but the claimant never served any time during the days he asked off and told the employer he had a warrant out for his arrest. The employer terminated the claimant's employment because he failed to serve his jail time on the days he asked for time off and because he had a warrant out for his arrest and the employer could not leave him in the store by himself with the possibility the police would come and arrest him leaving the store unattended. The fact that the claimant even needed time off was due to his criminal actions and the employer was generous in its accommodation of his schedule but could no longer continue to allow him time off work when he told it he had a warrant. Consequently, the administrative law judge must conclude the claimant's actions constitute disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 12, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,127.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs