

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLAUDIA MCKIM**  
Claimant

**APPEAL NO. 07A-UI-02964-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MURPHY OIL USA INC**  
Employer

**OC: 02/18/07 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Murphy Oil USA, Inc. (employer) appealed an unemployment insurance decision dated March 13, 2007, reference 01, which held that Claudia McKim (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2007. The claimant participated in the hearing. The employer participated through Annette Hatch, District Manager and Rhonda King, Store Manager. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time from May 2005 through February 15, 2007, when she was discharged. She started as a cashier, was promoted to an assistant manager in April 2006 and was promoted to a manager in July 2006. The claimant was properly trained as a manager and knew she had to do regular grocery inventory counts. An outside company conducted an audit of groceries and discovered the claimant was short \$832.56 in groceries. The claimant admitted to Annette Hatch, District Manager and Rhonda King, Store Manager, that she had not been doing her grocery counts for the last eight weeks. Ms. Hatch and Ms. King conducted an additional grocery count and could not find the grocery shortage. Although no previous warnings were issued, the claimant was discharged for a repeated policy violation.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has

discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for a repeated violation of policy by failing to conduct weekly grocery inventory counts, which resulted in over an \$800.00 loss to the store. Although she admitted to the employer she had not done her counts for the previous eight weeks, she now denies making that admission. The claimant's testimony and explanations are not credible. No reasonable person would throw away inventory count paperwork and the reason the claimant

does not have the paperwork is because she did not conduct the inventories as required. However, the employer also failed in its duty to supervise the claimant, to ensure she was performing her job duties. Since no warnings were issued, the claimant did not have notice that her job was in jeopardy and had no opportunity to improve her performance. Thus, the employer cannot establish whether the claimant's actions were willful in refusing to conduct the inventories or whether she was just incompetent. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated March 13, 2007, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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