

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALBERT D HANSEN
Claimant

APPEAL NO: 06A-UI-09000-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

OC: 08-06-06 R: 04
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 28, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 25, 2006. The claimant did participate. The employer did participate through Carolyn Thornberg, Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier part time beginning April 9, 2005 through August 7, 2006 when he was discharged. The claimant left the door to the cigarette storage room unlocked for approximately 50 minutes resulting in a theft from the employer of five cartons of cigarettes. The claimant admits that he knew that every time he left the cigarette storage room he was to lock the door behind him in order to prevent theft. The door is not visible from the claimant's normal work station so if it is unlocked he is unable to see if someone is entering the storage room. The employer and the claimant reviewed the surveillance tape together which demonstrated the claimant leaving the door unlocked. The claimant was then distracted by the accomplices of the thief while the thief entered the storage room and took the cartons of cigarettes. The claimant admits that on previous work occasion he has always locked the cigarette room door when he left the room. On the evening of August 6, he was in a hurry and left the door unlocked for approximately 50 minutes.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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(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 knew he was to lock the cigarette door every time he left the cigarette room yet he failed to do so on the evening of August 6, 2006. The claimant's failure to lock the door resulted in theft from the employer of five cartons of cigarettes. The claimant and his coworkers had been warned that failure to lock that door could result in the loss of employment. The claimant's reason that he was in a hurry is not a good reason for his failure to follow the employer's policy, particularly in light of his past compliance with the same policy. The claimant's failure to lock the cigarette door constitutes disqualifying misconduct. Benefits are 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 August 28, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. 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 \$472.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs