

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

SUE A HOSKINS  
1673 – 245<sup>TH</sup> ST  
MOUNT PLEASANT IA 52641-8118

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

Appeal Number: 06A-UI-04996-HT  
OC: 04/16/06 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge  
Section 96.37) – Overpayment

STATEMENT OF THE CASE:

The employer, Murphy Oil, filed an appeal from a decision dated May 2, 2006, reference 01. The decision allowed benefits to the claimant, Sue Hoskins. After due notice was issued, a hearing was held by telephone conference call on May 24, 2006. The claimant participated on her own behalf. The employer participated by Manager Daniel Brown.

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: Sue Hoskins was employed by Murphy Oil from August 20, 2004 until April 13, 2006. She was a part-time cashier. At the time of hire she

signed an acknowledgement she had read and understood the employer's policies, a copy of which is kept in the store. The attendance policy requires anyone who is not going to work their scheduled shift to call at least three hours before the start of the shift and find their own replacement.

Ms. Hoskins had received verbal and written warnings for her attendance since November 2004. Some were for being tardy and at least one was for being a no-call/no-show for her scheduled shift. The final written warning was given on February 13, 2006, for another incident of tardiness. That warning advised her the next disciplinary step could include discharge.

On April 12, 2006, the claimant was scheduled to start her shift at 5:00 p.m. She called and talked to the assistant manger, Michelle, around 2:30 p.m. and said she would not be in. Michelle gave her the phone numbers of other employees so she could find a replacement, but the claimant was not able to reach anyone. After 5:00 p.m. the assistant manager called her back and asked if she was going to be in to work and the claimant said she would not. Michelle told her at that time she would have to talk to Manager Daniel Brown before she returned to work.

On April 13, 2006, the claimant came to work and was discharged by the employer for excessive absenteeism and failure to find her replacement.

Sue Hoskins has received unemployment benefits since filing a claim with an effective date of April 16, 2006.

#### 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).

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 claimant had been advised her job was in jeopardy as a result of her excessive absenteeism. She was aware of this and also knew the policy which required at least three hours' notice of any unscheduled absence. In spite of this she did not call in at least three hours before the shift even though she knew before 2:00 p.m. she was not going to report. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Ms. Hoskins did not properly report her absence even if it was due to illness. It is, therefore, unexcused. In conjunction with the other unexcused absences this is excessive. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 2, 2006, reference 01, is reversed. Sue Hoskins is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$480.00.

bgh/kkf