

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOWARD E SEAMON**  
Claimant

**MURPHY OIL USA INC**  
Employer

**APPEAL NO: 10A-UI-09759-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/23/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated June 29, 2010, reference 01, that held the claimant was not discharged for misconduct on May 21, 2010, and benefits are allowed. A telephone hearing was held on August 26, 2010. The claimant participated. Dan Furlong, District Manager, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on March 22, 2001, and last worked for the employer on May 21, 2010. The claimant worked the last two and one-half years of his employment as a store manager.

The employer conducted an audit at the claimant's store on May 20, and it determined that the store was short 28 cases of beverage at a value of approximately \$1,015.00. Based on the claimant's inventory control report of May 17, the employer concluded inventory shortage had occurred during the past three days.

The claimant could not understand how the audit report could conclude he was that short other than it could have been a computer reporting error or possibly a theft of product. Manager Furlong went back to April 1, and he discovered that claimant's store scanner did not transfer to the employer computer system an inventory count for the beverage category though it did for other store category products. The claimant did not keep any personal record of the weekly beverage count, so he was not in a position to dispute the audit.

Furlong discharged the claimant on May 21, 2010 for his lack of inventory control and beverage shortage.

## REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 21, 2010.

The employer did not offer as evidence the audit or the auditor testimony who prepared it. From the evidence presented in this matter, it is not believable that the claimant committed some grievous error that led to the beverage shortage of 28 cases to have occurred in a three-day period. The claimant's belief that the audit shortage was the result of some computer or system accounting err is as plausible as the explanation offered by the employer. If the loss was due to theft, there is no evidence the claimant was involved or that he should have discovered it within three days.

**DECISION:**

The department decision dated June 29, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on May 21, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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