VIVIAN J WENDLING
Claimant

MURPHY OIL USA INC
Employer

APPEAL NO. 19A-UI-06593-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/07/19
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 9, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held in-person on October 31, 2019. Claimant participated personally. Employer participated by Dan Furlong.   Employer's Exhibits 1-5 and Claimant's Exhibits A-C were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 24, 2019. Employer discharged claimant on June 28, 2019 because claimant had allegedly sold tobacco to a person under 40 years of age without asking for an ID, in violation of company policies after warning.

Claimant worked as a cashier for employer. Company policy had indicated that employees are to ID all people under 30 years of age. In February, 2019 claimant was warned that she had not ID'd a secret shopper who was purchasing tobacco under 30 years of age. Claimant admitted that she had been spoken to by a manager after the incident.
Sometime in June, 2019, claimant was accused of selling cigarettes to a person under 40 years of age without asking for an ID. A secret shopper came to the store when claimant was working and asked to purchase cigarettes. The person was 34 years old and claimant allegedly did not ask for an ID. Claimant did not have an independent recollection of the incident. Employer did not bring video of the incident or anyone who could testify as to what occurred.

Employer stated that the company produced training videos to be watched by employees. On or around June 5, 2019 claimant was documented as having watched a training video on underage purchase of items. Employer said that this video contained information about the company's shifting of its policy regarding ID'ing under 30 years of age to ID'ing people under 40 years of age. Employer also stated that said video indicated that an employee could be

terminated for violating this policy. Employer brought no documentation to support this claim. Claimant stated that she didn't remember seeing anything about a change in the policy as it regarded ID'ing older people. Employer brought no documentation of this change. Claimant stated that up until her date of termination, she wore a button indicating people under 30 years of age would be ID'ed. Employer stated that new buttons which indicated the change of policy up to 40 years were delivered to stores, but he did not know if they'd been delivered to clerks.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers,* 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.,* 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.,* 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). In this matter, employer had the power to produce documentation about the company's rules; about the company's changes in ID'ing procedures; about the video claimant was to have watched; and about the characteristics of the secret shopper – as to whether he was a 34-year-old who looked 20 or a 34 year old who looked 50. Absent any of this information, the administrative law judge is not able to reasonably find misconduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning employer's recent change of standards for ID'ing shoppers who wish to buy tobacco. The last incident, which brought about the discharge, fails to constitute misconduct because employer did not prove misconduct or that claimant knew or should have known of the new, changed rules. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 9, 2019, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett
Administrative Law Judge

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Decision Dated and Mailed

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