

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**GREGORY J TARCA**  
Claimant

**APPEAL NO. 18A-UI-11010-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT HEINZ FOODS COMPANY**  
Employer

**OC: 05/27/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Kraft Heinz Foods Company (employer) appealed a representative's October 29, 2018, decision (reference 01) that concluded Gregory Tarca (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 27, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Lindy Helm, Human Resources Manager, and Colby Corrigan, Quality Supervisor. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on August 21, 2017, as a full-time night sanitation worker. The employer had a handbook and a Good Manufacturing Practice (GMF) Policy but it is unknown if the claimant signed for receipt of either. The employer believed the claimant was trained on the GMF Policy on an unknown date. The GMF Policy stated that employees should be well groomed and clean. The employer did not issue the claimant any written warnings during his employment.

On October 1, 2018, the claimant had an accident in the restroom. He cleaned himself as best he could and rolled his pants, soiled side in. He wore his protective suit out of the restroom and went out an emergency exit carrying his pants. He told a quality assurance inspector his situation, his progress at work, and that he had to go home. It was a cleaning night and no food was on the plant floor. The claimant walked through the plant to his lead. He explained his situation and said he had to leave. The lead did not give him any instructions.

The claimant returned to work the following day and worked through October 9, 2018. He properly reported his absence due to illness on October 10, 2018. On October 11, 2018, the

claimant started his overnight shift. On October 12, 2018, the employer terminated the claimant for violation of the GMP Policy for not being well-groomed and clean at work. The claimant carried his soiled pants onto the plant floor.

The claimant filed for unemployment insurance benefits with an effective date of May 27, 2018. The employer provided the name and number of Diana Huey as the person who would participate in the fact-finding interview on October 25, 2018. The fact finder called Ms. Huey but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to

warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence that the claimant's actions were deliberate or willful. He had an accident and told his quality assurance inspector and his lead. They saw what he was doing and did not instruct him differently. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's October 29, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs