

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL A HARRAH
Claimant

APPEAL NO. 10A-UI-09364-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

**Original Claim: 05/23/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 25, 2010, reference 01, which denied benefits based upon her separation from Kraft Pizza. After due notice was issued, a telephone hearing was held on August 17, 2010. The claimant participated personally. Participating as a witness/representative was Chris Garlock, union representative. The employer participated by Ms. Julie Stokes, associate human resource manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cheryl Harrah was employed by Kraft Pizza Company from July 29, 1993, until May 26, 2010, when she was suspended and subsequently discharged from employment. Ms. Harrah worked as a full-time production worker and was paid by the hour. Her immediate supervisor was Chris Andrus.

The claimant was suspended and subsequently terminated based upon an incident that had taken place on May 26, 2010. On that day, when the claimant returned from break, she found that a trash receptacle designated for her work area had been taken by another employee from a different work area. Ms. Harrah retrieved the receptacle and was pulling it back to her work area when the other worker grabbed the receptacle and began pulling it back to his work area, pulling Ms. Harrah backward as he traveled. The other worker was backing up as he pulled the trash receptacle and halted when he had backed up against a walled area. A verbal exchange ensued when the other worker was not willing to relinquish the trash receptacle. As the other worker leaned into Ms. Harrah's face and began to spit at her, the claimant raised her arm to block his spitting.

Because there were no other lead individuals or supervisory personnel available to assist Ms. Harrah, she believed that her attempt to retrieve the waste receptacle was reasonable, as it

was needed in her work area. The claimant believed that the other worker smelled of alcohol that day and that that may have caused the other worker's unusual behavior.

Upon reviewing the matter and taking statements from other workers, the employer concluded that Ms. Harrah may have been the aggressor, because reports indicated that the claimant's arm was raised and the other worker was against a wall. A decision was therefore made to terminate Ms. Harrah from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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.

In this case, the claimant participated personally and provided sworn testimony denying being the aggressor in the matter. The claimant testified that she was merely attempting to retrieve a waste receptacle that was to be used in her work area and that the other employee suddenly acted inappropriately by dragging the claimant backwards and then attempting to spit in the claimant's face. The claimant testified that she did not strike the male worker or "pin him against the wall" but that she had raised her arm only to block spittle and that the other worker

had in fact backed himself into a walled area. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable.

In contrast, the employer relies on hearsay in support of its position that the claimant's discharge is disqualifying. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. While the decision to terminate the claimant from employment may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record is not sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 25, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw