

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLISHA J MCCALL**  
Claimant

**APPEAL NO. 11A-UI-03344-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**OC: 02/13/11  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 15, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in 2008. The claimant knew the employer had an attendance policy and understood that after so many absences the employer started its progressive discipline. The claimant received intermittent FMLA for one of her medical conditions, but not the other condition.

A month or two before her discharge, the claimant received a final written warning. The claimant understood that if she had one more unexcused absence, she would be discharged. On or about February 12, 2011, the claimant was very sick and could not work. She properly notified the employer that she was unable work. The claimant was ill based on a condition that was not covered under her FMLA. The employer discharged the claimant for violating the employer's attendance policy when she did not report to work on February 12, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or

other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant knew and understood her job was in jeopardy because of continuing attendance issues. On February 12, the claimant properly reported she was ill and unable to work. The claimant did not intentionally fail to report to work on February 12. Instead, she was unable to work because she was ill. While the employer had justifiable business reasons for discharging the claimant, she did not commit a current act of work-connected misconduct. As of February 13, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 15, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 13, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/kjw