

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS H GUTIERREZ
Claimant

APPEAL NO. 08A-UI-08696-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

OC: 07/20/08 R: 04
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 28, 2008. Claimant participated and was represented by Jack Schwartz, Attorney at Law. Employer participated through Julie Stokes and Rod Warhank, Human Resources Associates.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time shipping clerk from August 30, 2006 until July 24, 2008 when he was discharged. His last day of work was July 10 when he was suspended because of an allegation he had put human waste on toilet paper and left it scattered on the floor. Supervisor Larry Graves, who did not participate in the hearing, made the report and claimed to have checked the restroom before and after claimant used it and presented employer with an anonymous line technician's written statement. When employer initially confronted and accused him of doing this multiple times over an extended period of time. Later he did acknowledge doing this on July 10 but his written statements were not made with the assistance of an interpreter. The restroom had a single toilet in a stall or room separate from the sink and paper towel dispenser and was available to 40 truck drivers and 30 or 40 employees in the shipping area where claimant worked. There was no trash can in the toilet area and when he entered, the toilet was overflowing so he placed the dirty toilet paper on the floor in the corner but did not scatter it around. The person who was assigned to clean the restroom on a daily basis did not do so even though claimant had brought the issue to his attention two or three weeks before the separation. Around the same time he went to the upstairs restroom while working on a Saturday and his crew leader Tyler told him he must not use that restroom again as it was too far away from his work area and he could be suspended or fired for that if it happened again even though claimant told him the other toilet was

overflowing and dirty. Another coworker regularly used the women's restroom because the men's room was consistently dirty.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Claimant was extremely limited by what he could do with the used toilet paper given the clogged state of the toilet and the lack of a trash can inside the restroom or the stall. He used his reasonable best judgment given the dire circumstances and lack of other restrooms and did not engage in misconduct. It would behoove employer, as a food processing plant, to ensure an adequate number of clean and operable restroom facilities for its employees and visitors. Benefits are allowed.

DECISION:

The September 18, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css