

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D PORTER
Claimant

APPEAL NO: 12A-UI-01833-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GLOBAL INC
Employer

OC: 01/08/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 13, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Rod Warhank, the associate human resource director, appeared on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, 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 February 1999. The claimant worked as a full-time area mechanic. The claimant has worked continuously for the employer, but in 2011 the employer's unemployment insurance account number changed. The determination for reference 01 relates to the account number for 2011.

As part of the employer's safety regulations, the employer has a lockout, tagout procedure employees must follow. The claimant knew and understood the lockout, tagout procedure. He also understood the importance of following these safety procedures.

In April 2010 the claimant left his lock on equipment when he left work at the end of his shift. The employer gave the claimant a written warning for this incident. On February 11, 2011, the claimant received a written warning for again leaving his lock on equipment after his shift ended and he went home. This warning was grieved and the written warning was voided on May 12, 2011. (Employer Exhibit Two.) On July 20, the employer gave the claimant a written warning and a three-day suspension for failing to follow the proper lockout, tagout procedures while working on the ADCO. The claimant refused to sign the written warning, because he did not believe he violated the lockout, tagout procedure. (Employer Exhibit Three.) Supervisors were present and observed the claimant but said nothing to him about failing to follow the lockout,

tagout procedure while he worked on the ADCO. After the claimant received this written warning, he understood his job was in jeopardy.

On January 5, 2012, the claimant worked with another mechanic, C.M., to fix a slipping brake on the mondini. The claimant put his lock on the mondini, he was called away to another line, and C.M. continued working on the brake. (Employer Exhibit One.) After the claimant was called to another line, he forgot about his lock. C.M. did not contact claimant before he left work. The claimant went home at midnight, the end of his shift, without taking his lock off the mondini. (Employer Exhibit One.)

When a lock has not been removed, the owner of the lock is supposed to be called before the lock is removed. In this case, the lock was on a line that would not run again until Monday, January 9. The claimant was scheduled to work the next day, January 6 at 1:30 p.m. When he reported to work on January 6, he learned his lock had been cut off but no one had tried to contact him before cutting off his lock. Someone did not follow the employer's procedure to call the claimant before cutting off his lock.

On January 13, 2012, the employer discharged the claimant because he failed to remove his lock before he went home on January 5, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant when he failed to remove his lock before he went home on January 5. Since C.M. left work first, the claimant did not know if C.M. finished the repair. In this case, the claimant became involved in fixing or resolving other equipment problems while C.M. worked on the mondini that the claimant had locked out. The claimant did not intentionally fail to remove his lock before he went home, he simply forgot. The facts do not establish that his failure to remove the lock resulted in any substantial damage to the employer's interests. Also, if another employee(s) had followed the employer's established procedure and called the claimant, the claimant would have removed his lock.

Even though the claimant had been warned before about removing his lock before he left work, his failure to remove his lock on January 5, 2012, does not amount to negligence or carelessness to the extent that the claimant committed work-connected misconduct. The claimant violated the employer's policy when he did not remove his lock before he left work on January 5, but this incident does not rise to the level of work-connected misconduct. As of January 8, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's February 13, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 8, 2012, the claimant is qualified to receive benefits, provided he 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