

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORA L WHITTEMORE**  
Claimant

**APPEAL NO. 10A-UI-16013-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**OC: 10/24/10**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 16, 2010 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. Julie Stokes, an assistant human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is 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 March 1999. She worked as a CLSP operator. The claimant understood her job was in jeopardy, because she was on her final written warning for work performance issues. The claimant also knew the employer would discharge an employee if an employee falsified any test results.

During the claimant's September 18, 2010 shift there were equipment issues. The claimant asserted Chill One was down; but, based on reports from production and maintenance employees, Stokes understood Chill Two was down on September 18, 2010. During her shift, the claimant took an acid test as she is required to do. The claimant wrote down the results of this test as coming from Chill Two. The next day the claimant noticed her test result had been crossed off. She then wrote a note on the test results indicating she had taken the acid test, but it may have still been in the acid wash when she left. The employee who worked after the claimant also took a test. The claimant wrote the note because she did not want the employer to assume she had not done her job. The claimant works alone and no one supervises or sees what she does or does not do.

On September 18, the employer became suspicious that the claimant had falsified a test. Stokes investigated and, based on information from production and maintenance employees,

Stokes concluded the claimant could not have taken a test on Chill Two that she recorded she had taken. The employer did not talk to the claimant about falsifying a test until October 1.

During October 1 meeting, the claimant told Stokes that certain employees could verify seeing her during her shift. The employer investigated further and concluded the employer's initial conclusion was correct—the claimant falsified a test result that she had not even taken.

The employer suspended the claimant on October 12. On November 12, 2010, the employer discharged her for falsifying a record.

#### **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 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).

If the claimant falsified a test, she committed work-connected misconduct. But, if she incorrectly recorded it in the wrong space and later changed it, she did not commit work-connected misconduct. The issue in this case centers on the credibility of the evidence presented. The claimant presented details of what happened during her September 18 shift. Since the claimant had already had a final warning for work performance issues, it is illogical she would falsify a test and even draw attention to it making a note on the record kept by the employer. Stokes had no personal knowledge about the shift or the operations. She relied on reports and what other employees told her during the employer's investigation. Based on the information Stokes obtained from other employees, she discharged the claimant for justifiable business reasons.

Unfortunately, the employer did not have anyone with personal knowledge testify at the hearing. When Stokes investigated, she relied on information that was more trustworthy than the evidence the employer presented during the hearing. As result, the claimant's credible testimony must be given more weight than the employer's hearsay information based on information from employees who did not testify at the hearing. Based on the credibility of the evidence presented, the claimant did not commit work-connected misconduct. She did not falsify a test. Therefore, as of October 24, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 16, 2010 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of October 24, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw