

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS L GAY**  
Claimant

**APPEAL NO. 07A-UI-05334-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA COMPANY**  
Employer

**OC: 04/25/07 R: 04  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Kraft Pizza Company filed an appeal from a representative's decision dated May 10, 2007, reference 01, which held that no disqualification would be imposed regarding Travis Gay's separation from employment. After due notice was issued, a hearing was held by telephone on June 11, 2007. Mr. Gay participated personally. The employer participated by Jody Martin, Staffing Specialist, and Jessica Ayala, Human Resources Associate.

**ISSUE:**

At issue in this matter is whether Mr. Gay was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gay was employed by Kraft Pizza Company from April 5, 2006 until April 23, 2007 as a full-time production worker. He was discharged because of his attendance. He was three hours late on January 10, 2007 because he overslept. He was ten minutes late on February 6, 2007 for unknown reasons. He was absent on March 13, 2007 but did not call the employer to report the absence. Mr. Gay was over three hours late on April 19, 2007 because he overslept. His shift was from 3:00 until 11:00 p.m. Mr. Gay called on April 20, 2007 to report that he would be absent because his wife's grandfather had suffered a heart attack and he had to take her to the hospital. He was told not to return to work until the supervisor could confirm his status. He was notified by his union representative on April 23, 2007 that he no longer had employment.

Mr. Gay received a memo concerning his absences and tardiness on June 28, 2006. He received his first written warning for absences on August 26, 2006 and his first written warning for tardiness on September 14, 2006. He received his second written warning for absences on November 7, 2006. He received an additional written warning for tardiness on February 13, 2007. His final written warning for absences was also on February 13, 2007.

Mr. Gay filed a claim for job insurance benefits effective April 22, 2007. He has received a total of \$2,004.00 in benefits since filing his claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

The employer contended that Mr. Gay voluntarily quit when he failed to report for work or contact the employer on April 21 and April 22. The employer confirmed that he would have been at the discharge stage as of April 20, 2007. Therefore, it seems more likely than not that he would have been told on April 20 not to return to work until his status could be reviewed, as he so testified. As such, he would not be expected to work on April 21 and 22. Mr. Gay was notified on April 23 that he had been discharged. For the above reasons, the administrative law judge concludes that he was discharged from the employment.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work. Mr. Gay had attendance issues dating back to June 28, 2006, when he was first warned about his tardiness. He was warned about tardiness again on September 14, 2006. In spite of the warnings, he was over three hours late on January 10 due to oversleeping and ten minutes late for unknown reasons on February 6. Both occasions are unexcused, as the evidence does not establish any reasonable cause for them.

Mr. Gay was clearly on notice as of February 13, 2007 that his absences and tardiness were jeopardizing his continued employment with Kraft. He was then absent without calling in on March 13. The absence is unexcused because it was not properly reported. He was over three hours late on April 19 due to oversleeping. Oversleeping is not a reasonable cause to miss time from work. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge considers the tardiness of April 19 to be a current act in relation to the April 23 discharge. Mr. Gay had an unreported absence and a three-hour occasion of tardiness after his final written warning. Given his attendance history and the warnings he had received, the administrative law judge concludes that the unexcused absences in 2007 (January 10, February 6, March 13, and April 19) are sufficient to establish excessive unexcused absenteeism. As such, the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

Mr. Gay has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated May 10, 2007, reference 01, is hereby reversed. Mr. Gay was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Gay has been overpaid \$2,004.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw