IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JASSEN R ALEKSIEJCZYK
Claimant

KRAFT PIZZA CO
Employer

APPEAL NO. 11A-UI-05778-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/13/11
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 21, 2011 (reference 02) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 25, 2011. Claimant participated. Employer participated through associate human resources director, Rodney Warhank and business unit manager, Jose Pabon. Employer's Exhibit 1 (fax numbered pages 4 through 12) was admitted to the record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a slicer machine operator from February 2001 and was separated from employment on March 24, 2011 after a union review process. His last day of work was March 17, 2011. On March 13, 2011, part of his job duties on the half shift, included tearing down the machine he operated so the sanitation crew could clean the equipment overnight and ready it for production the next morning. He partially disassembled the machine and struggled with removing the white belts because he was unfamiliar with it. He had asked coworker Doug Critten for help with removing the two guards but did not ask him or anyone else for help with the white belts before leaving. Supervisors had told him in the distant past not to worry if he could not get the belts off as sanitation would handle them. (Employer's Exhibit 1, fax numbered pages 10, 11) He had been warned about "work performance" on March 8, 2011 after he failed to record a code on a report for the meat he sliced to set up the appropriate shelf life/expiration date. On September 1 he left for break two minutes early and was warned for "work performance" rather than attendance. Had the other warnings been labeled as "clerical" or "attendance" rather than "work performance," he would not have been discharged for a third "work performance" warning. He had no prior warnings for failure to tear down machinery for the sanitation crew or any similar conduct.

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." *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. The conduct for which claimant was discharged was merely an isolated incident of poor judgment in not

finding someone to help him complete the machine disassembly before leaving work. Although the employer may have warned claimant about other issues they classified as "work performance," they were not similar enough to amount to a history of related misconduct. Thus, the employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The April 21, 2011 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css