

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL F PANNO**  
Claimant

**APPEAL NO: 11A-UI-08748-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT FOODS GLOBAL INC**  
Employer

**OC: 05/29/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's June 20, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his witness, Autumn Fernandez. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes 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 August 2008. The claimant most recently worked as a line technician or floor supervisor. Prior to May 29, 2011, the claimant had not received any warnings that the employer had any problems or issues with him.

On May 19, after the claimant walked up six flights of stairs, he needed his inhaler and discovered it was not in his pocket. The claimant contacted his girlfriend and asked her to retrace his steps. She found his inhaler. During a break, the claimant left the employer's premises still wearing his hardhat to get his inhaler. The claimant has previously left the plant and knows other employees have left the plant during a break. He was gone from the facility a total of 11 minutes. The claimant had no understanding he did anything wrong when he left to get his inhaler.

On May 19, 2011, the employer suspended the claimant for leaving the facility without telling anyone he left. The employer discharged the claimant. The claimant understood he had been discharged because he left the plant during his break while wearing his hardhat.

**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 may have had business reasons for discharging the claimant. Since the employer did not participate in the hearing and the facts indicate the claimant did nothing different than other employees, the evidence does not establish that he intentionally or substantially disregarded the employer's interests. The claimant may have used poor judgment when he left to get his inhaler, but he did not commit work-connected misconduct. As of May 29, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's June 20, 2011 determination (reference 01) is reversed. The employer discharged the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. As of May 29, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/css