

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHANDA M JOHNSON**  
Claimant

**APPEAL NO. 09A-UI-15461-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**OC: 09/06/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Chanda Johnson filed an appeal from a representative's decision dated October 1, 2009, reference 01, which denied benefits based on her separation from Kraft Pizza Company. After due notice was issued, a hearing was held by telephone on November 16, 2009. Ms. Johnson participated personally. The employer did not respond to the notice of hearing.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Johnson was employed by Kraft Pizza Company from March of 2000 until September 11, 2009. She was last employed full time as cooler coordinator. She was discharged because of her attendance. The final incident that prompted the discharge occurred on September 5 when she was approximately two hours late reporting for work.

Ms. Johnson has a minor child who suffers from asthma. In December of 2008, she was approved to use Family and Medical Leave Act (FMLA) time on an intermittent basis if she had to miss work due to her son's asthma. She had always been allowed to use FMLA if her son's asthma attacks prevented her from arriving at work on time. She had two working days after the absence in order to notify the employer that she was using FMLA time. Ms. Johnson's son had an asthma attack on September 5, which caused her to be two hours late. She next worked on September 7 but was not scheduled again until September 11. She notified human resources on September 11 that she was using FMLA for the tardiness of September 5. However, she was discharged the same day because her notice to human resources was not considered timely.

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

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 benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work. There must be a current incident of unexcused absenteeism to support a disqualification from benefits.

In the case at hand, Ms. Johnson's discharge was triggered by her final absence of September 5 when she was two hours late. The absence was caused by her son's asthma attack, which was covered by FMLA. She reported the use of FMLA in the same manner she had always used. She was never told to use a different method of notice or that she might be discharged for using the procedure she did use. Therefore, Ms. Johnson was not on notice that her conduct with regard to September 5 was contrary to the employer's standards. For the above reasons, the tardiness of September 5 represented a period of excused absenteeism.

The next most prior attendance infraction was a period of tardiness on August 23, 2009. However, an absence that occurred on August 23 would not represent a current act in relation to a discharge that occurred two weeks later on September 5. The administrative law judge concludes that the employer has failed to establish a current act of misconduct. As such, no disqualification is imposed.

## **DECISION:**

The representative's decision dated October 1, 2009, reference 01, is hereby reversed. Ms. Johnson was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs