

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTONIO C BOWENS

Claimant

APPEAL 21A-UI-07798-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT HEINZ FOODS COMPANY LLC

Employer

OC: 02/07/21

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 16, 2021, claimant/appellant filed a timely appeal from the Iowa Workforce Development decision dated March 12, 2021 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits. A telephone hearing was held on May 4, 2021. The parties were properly notified of the hearing. The claimant, Antonio Bowens, participated personally. The employer, Kraft Heinz Foods Company, LLC, did not participate.

ISSUE:

Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time Vat Washer. Claimant's first day of employment was May 23, 2019. The last day claimant worked on the job was January 31, 2021. Claimant was placed on leave or otherwise suspended between January 31, 2021, and February 15, 2021. Claimant was discharged from employment on February 15, 2021.

As part of claimant's 12-hour shift, he was allowed to take one 30-minute break and three 15-minute breaks. Claimant testified that when the company was busy, he would take a 30-minute break and get right back to work; however, when business was slow, claimant would stretch his 30-minute break to 45 minutes. Claimant testified that he had been taking extended breaks for quite some time. He further testified his supervisor was aware of the fact he was taking longer breaks, he was trained by an individual that took extended breaks, and his whole department took extended breaks.

Claimant received warnings for his extended breaks on August 23, 2020, and September 17, 2020. Following the September 17, 2020, warning, claimant was suspended for one day.

According to claimant, the employer implements a point system for attendance issues. The employer has a progressive disciplinary policy. An employee's first offense warrants a warning. An employee's second offense warrants a one-day suspension. An employee's third offense warrants a two-day suspension. Lastly, an employee is subject to termination following his or her fourth offense. Claimant was aware of the policy and testified the same could be found in the employee handbook.

Claimant testified that a new management team was hired in January 2021 and changed the aforementioned policy. He first learned of this change upon termination.

On February 15, 2021, claimant met with the Human Resources department to discuss his job status. The topics discussed during the meeting were the amount of breaks claimant was taking, and the length of the breaks claimant was taking. Later that day the employer called claimant and notified him of its decision to terminate his employment contract for violating the break policy. Claimant feels as though the new management team wanted to make an example out of someone who takes too many or too long of breaks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the administrative law judge concludes that claimant was discharged for willful misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32 provides in relevant part:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Unauthorized extended breaks constitute theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law.

Claimant does not dispute the fact that he was taking extended, unauthorized breaks. Despite testifying that such conduct was common in the workplace, the claimant's disciplinary action says otherwise. Claimant received at least two warnings – one of which included a one-day suspension – for his conduct. Such disciplinary action on the part of the employer casts doubt on whether taking extended breaks was an accepted practice in the workplace.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The claimant deliberately disregarded the employer's interest in paying employees only for work time and authorized breaks. Benefits are denied.

DECISION:

The decision dated March 12, 2021 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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June 4, 2021
Decision Dated and Mailed

mjl/scn