

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEN J SMITH
Claimant

APPEAL NO. 15A-UI-13430-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GROUP INC
Employer

OC: 11/08/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kraft Foods Group (employer) appealed a representative's November 30, 2015, decision (reference 01) that concluded Ben Smith (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 29, 2015. The claimant participated personally. The employer participated by Kelsey Smith, Assistant Human Resources Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 27, 2014, as a full-time production team member. The claimant signed for receipt of the employer's handbook on January 27, 2015. On September 30, 2014, the employer issued the claimant a written warning for chewing gum at work. On July 3, 2015, the employer issued the claimant a written warning for performance issues and a three-day suspension for inappropriate behavior. Each time the employer notified the claimant that further infractions could result in termination from employment.

On October 10, 2015, the claimant was supposed to work from 10:00 p.m. to 6:30 a.m., or until the next shift relieved him. At about 6:15 a.m. the claimant had an extreme urge to go to the bathroom and could not find a supervisor, service person, or line tech. When the line stopped, the claimant went to the bathroom. At about 6:20 a.m. the claimant returned to the line and found his first shift replacement working in his place. His replacement was not very knowledgeable about the job. The claimant frequently stayed over to help the employer. The claimant agreed to take the contract approved fifteen minute break and return to help the replacement. The claimant went to the cafeteria for his break. His supervisor questioned him about his whereabouts earlier. The claimant returned to work after his break and clocked out at 7:39 a.m. On October 27, 2015, the employer issued the claimant a written warning and

suspension for leaving work at 6:15 a.m. without permission, not returning to work, and clocking out at 7:39 a.m. On November 9, 2015, the employer terminated the claimant for theft of company time.

The claimant filed for unemployment insurance benefits with an effective date of November 8, 2015. The employer participated personally at the fact finding interview on November 25, 2015, by Greg Isbell.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.32(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.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on October 10, 2015. The claimant was not suspended until October 27, 2015, and not discharged until November 9, 2015. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's November 30, 2015, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css