

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ABDOULAYE SOW**

Claimant

**KRAFT HEINZ FOODS COMPANY**

Employer

**APPEAL 18A-UI-06381-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/13/18**

**Claimant: Respondent (1)**

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 1, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the discharge was not for a current act of misconduct. The parties were properly notified of the hearing. A telephone hearing was held on June 26, 2018. The claimant, Abdoulaye Sow, participated. French/English interpreters Mick (ID number 8653) and Moni (ID number 5133) assisted with the hearing. The employer, Kraft Heinz Foods Company, participated through Sharon Bull, HR Generalist. Claimant's Exhibit A and Employer's Exhibits 1 through 3 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a production team member, from July 8, 2013, until May 8, 2018, when he was discharged. Claimant last reported to work on July 7, 2017. The employer does not know if claimant was scheduled to work between July 8 and December 10, 2017. Claimant was absent from work between December 11 and December 15, 2017. Claimant did not call in and report that he would be absent from these shifts. Claimant denies that he was on the schedule at this time. At some point after December 15, claimant went on a medical leave of absence. Claimant was scheduled to return to work in July 2018. On May 8, 2018, claimant was discharged via letter because of his attendance.

The administrative record reflects that claimant has received no unemployment since filing a claim with an effective date of May 13, 2018, for the six weeks ending June 23, 2018. The administrative record also establishes that the employer did not participate in the fact-finding

interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification. On the date of the fact-finding, the employer was having telephone trouble and the call could not get through. The administrative record does not include the fact-finding documentation or an employer statement of protest.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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.

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(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the

claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011). In reviewing past acts as influencing a current act of misconduct, the ALJ should look at the course of conduct in general, not whether each such past act would constitute disqualifying job misconduct in and of itself. *Attwood v. Iowa Dep't of Job Serv.*, No. \_\_-\_\_, (Iowa Ct. App. filed \_\_, 1986).

In this case, assuming the employer's version of events is credible, claimant's final absence occurred on December 15. Claimant was not discharged until approximately five months later. The employer did not provide any explanation for the significant delay between the final absence and the date of discharge. Claimant was not discharged for a current act of misconduct. Accordingly, benefits are allowed. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

#### **DECISION:**

The June 1, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

---

Elizabeth A. Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/scn