

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWERENCE JOHNSON
Claimant

APPEAL NO. 11A-UI-07548-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

**OC:04/10/11
Claimant: Appellant (4)**

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32 (9) - Suspension/Disciplinary Layoff

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated June 1, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 8, 2011, in Davenport, Iowa. Claimant participated. The employer did not respond to the hearing notice and did not participate. The record consists of the testimony of Lawrence Johnson.

ISSUE:

Whether the claimant was suspended for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a full-time production worker at the employer's Oscar Mayer plant in Davenport, Iowa. The claimant was involved in a work-related accident where he dropped what was called a "coffin" of meat. The claimant was required to take a post accident alcohol/drug test, which was positive for marijuana. The claimant was not injured. He does not know the amount of the property damage, if any.

The claimant's drug screen was done at a laboratory. The claimant received a call from the laboratory that he tested positive for marijuana. The claimant was offered the opportunity for a split sample to be tested. The claimant declined to have the split sample tested. He was also asked about any prescription drugs that he was taking. The employer has a written policy that provided an Employee Assistance Program (EAP), which the claimant attended. The claimant was placed on disciplinary suspension on or about April 7, 2011, and was allowed to return to work on May 22, 2011.

The employer did not participate in the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension was for disqualifying reasons. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code § 96.5-2-a. Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

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.

871 IAC 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.

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 claimant was suspended due to his positive drug test for marijuana. Iowa Code § 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. In order for a violation of an employer's drug or alcohol policy to be disqualifying misconduct, it must be based on a drug test performed in compliance with Iowa's drug testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). The Eaton court said, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558.

There is insufficient evidence in this case to show that the drug test performed on the claimant was in compliance with Iowa's drug testing laws. The employer did not participate in the hearing and therefore there is no evidence on why the claimant was asked to take a drug test for dropping a coffin of meat. The claimant testified that he was not injured. There was no evidence on whether there was reasonable suspicion or that the amount of property damage exceeded one thousand dollars. Unless the employer shows that it complied with Iowa's drug testing laws, there can be no disqualification based on the claimant's positive test.

The representative set this decision up as a disqualification based on the representative's conclusion that the claimant was under the care of a doctor and had not been released to return to work. This is not the correct issue in this case. The issue is whether the claimant should be disqualified on the basis of misconduct due to a disciplinary suspension. As noted above, the employer has failed to establish misconduct. The claimant was able and available for work. Benefits are therefore allowed provided all other eligibility requirements are met.

DECISION:

The decision of the representative dated June 1, 2011, reference 01, is modified in favor of the appellant. The claimant is eligible for unemployment insurance benefits from April 10, 2011, through May 21, 2011.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css