

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA K SNIDER
Claimant

APPEAL NO. 11A-UI-15304-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GLOBAL INC
Employer

**OC: 10/30/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 21, 2011, reference 01, that denied unemployment insurance benefits. After due notice, a telephone conference hearing was held on December 22, 2011. The claimant participated personally. Participating as a witness for the claimant was Mr. James Brown. The employer participated by Ms. Julie Stokes, Associate Human Resource Manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tina Snider was employed by Kraft Foods Global, Inc. from April 21, 2010 until November 3, 2011 when she was discharged from employment. Ms. Snider was employed as a full-time sanitation/production worker normally working 8:00 p.m. until 4:30 a.m. Her immediate supervisor was Heather Jahn.

Ms. Snider was discharged when it was determined that the claimant and another worker had not clocked out at the end of their work shift at 4:30 a.m. on October 28, 2011 but instead they had remained in company locker rooms not performing services but claiming overtime for approximately a two-hour period. When confronted about the matter Ms. Snider did not deny the employer's assertion that she was claiming overtime without authorization or performing services.

It is the claimant's position that her immediate supervisor was recently not allowing the claimant to take lunch or break periods and therefore the claimant is in effect, justified in obtaining extra pay from the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

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 of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence establishes that Ms. Snider and another worker intentionally remained in a locker room area after completing their duties at 4:30 a.m. on the morning of October 28, 2011 and remained in the locker area for an approximate two-hour period, thus claiming overtime pay. The evidence is also undisputed that the claimant was not authorized to work overtime and it is undisputed that the claimant was not performing any services for the employer during the two-hour period. The claimant's intention was to obtain pay from the company because the claimant believed that pay was due because the company recently was not giving the claimant a proper lunch or break periods.

Although sympathetic to the claimant's situation the administrative law judge concludes based upon the evidence in the record that reasonable alternatives were readily available to the claimant. The claimant could have filed a union grievance or in the alternative arranged with the company's human resource department an opportunity either in person or by telephone to complain about the lack of lunch or breaks. Claiming unauthorized overtime for a period of time when no services were authorized nor performed by the claimant for the company showed a willful disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Employment Security Law.

DECISION:

The representative's decision dated November 21, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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