IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SUSANNA R GARIBAY
Claimant

KRAFT PIZZA CO
Employer

APPEAL NO. 09A-UI-17064-H2T

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 10-11-09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 30, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 17, 2008. The claimant did participate. The employer did participate through Julie Stokes, Associate Human Resources Manager.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker running the back part of the line, full-time, beginning August 20, 2008, through October 14, 2009, when she was discharged.

Part of the claimant's job responsibilities included making sure that the correct expiration date was stamped on the individual product packages and on the boxes in which the product was shipped to customers. On September 27 the employer discovered that the claimant had run the wrong expiration date on the boxes of some of the products. The actual expiration date on the packages of product inside the boxes were correct, but the date on the outside of the boxes was incorrect. The claimant had failed to change the metal tab from 2009 to 2010. Thus, the customers would think they were being shipped old product or product that would expire earlier that it really would. The employer caught the claimant's mistake before the boxes left the plant and the mistake was corrected, albeit at some cost to the employer. On October 2 the claimant was given a written warning putting her on notice that further mistakes could lead to additional discipline.

On October 8 the employer learned that product the claimant had run on September 23 was stamped with the incorrect expiration date on each individual package of baloney in four hundred cases of product. The employer had to recall four hundred cases of product and re-seal it and print it with the correct expiration date at an approximate cost to the employer of forty-thousand dollars. The claimant was discharged when the employer learned that it was her

failure to change the year from 2009 to 2010 on the metal tab that led to the error. The claimant actually made the error on September 23, prior to her discipline of October 2, but it just took that long for the employer to learn of the error from their customers. There is no evidence that the claimant committed any errors after her first and only warning on October 2, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351

N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

After the claimant was warned on October 2, 2009 that she would face additional discipline if she failed to insure that the correct expiration date was printed on the product, there is no evidence that she made any additional errors. The error that was discovered on October 8 was actually made by the claimant on September 23, it just took longer to discover. Under these circumstances, the administrative law judge cannot conclude that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The October 30, 2009, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw