

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CRAIG LEVINE  
5003 MORNINGSIDE AVE  
SIOUX CITY IA 51106

SIOUXPER PIZZA INC  
DOMINO'S PIZZA  
4141 – 38<sup>TH</sup> ST S #E-1  
FARGO ND 58104-6920

Appeal Number: 04A-UI-11984-CT  
OC: 10/10/04 R: 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Siouxper Pizza, Inc. filed an appeal from a representative's decision dated October 28, 2004, reference 01, which held that no disqualification would be imposed regarding Craig Levine's separation from employment. After due notice was issued, a hearing was held by telephone on December 1, 2004. Mr. Levine participated personally. The employer participated by Sean O'Keefe, Area Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Levine was employed by Siouxper Pizza, Inc., doing

business as Domino's Pizza, from October 10, 1996 until October 13, 2004. He was last employed full time as general manager, a position he had held for approximately the last five years of his employment. Mr. Levine was discharged because the employer felt he was falsifying company records.

On October 11, an unannounced evaluation was conducted at Mr. Levine's restaurant. As a result of the evaluation, the employer concluded that Mr. Levine had manipulated the system to show a "wait" time that was substantially less than the norm for other restaurants. The employer felt he was doing so in order to achieve a "five star" rating, which would result in him receiving a \$500.00 bonus. The computer system reflected occasions on which a driver would log out with a pizza, log back in five minutes later, and then log out with another pizza. The employer believed that, in such circumstances, both pizzas were being delivered in one run and, therefore, should both be logged out at the same time. The employer uses a software system which computes the run time based on the address assigned to the telephone number from which a pizza is ordered. The run times may or not be accurate. After reviewing materials from the restaurant, the employer concluded that Mr. Levine was cheating and, therefore, discharged him on October 13, 2004. He was not questioned about the matter prior to being discharged.

Mr. Levine had received previous warnings regarding deficiencies in his restaurant. Drivers did not always have the car toppers lit. Employees did not always wear hats and did not always have name tags on. People assigned to close the restaurant were not always doing a thorough job of cleaning. On one occasion, an unqualified person was allowed to cut pizza. The last warning was on September 30, 2004 and concerned problems noted while Mr. Levine was on vacation.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Levine was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although the employer's evidence established that Mr. Levine was an unsatisfactory employee, it did not establish that he deliberately or intentionally disregarded the employer's standards or interests. The allegation that he was cheating on orders was not established to the satisfaction of the administrative law judge. The employer submitted no documentation to substantiate its allegations. Moreover, Mr. Levine was given no opportunity to refute the employer's conclusions prior to his discharge and had no documentation from which to dispute the employer's conclusions at the time of the hearing.

The administrative law judge believes that Mr. Levine was at all times working to the best of his abilities. He acknowledged that there were occasional lapses on the part of those working under him and that he attempted to re-direct them when problems were noted. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as the employer has failed to establish substantial misconduct, no disqualification is imposed.

DECISION:

The representative's decision dated October 28, 2004, reference 01, is hereby affirmed. Mr. Levine was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc