

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

JASON T LATIMER
307 N NEISSE ST
BLUE GRASS IA 52726

KRAFT PIZZA CO
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-04497-DW
OC: 03/20/05 R: 04
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kraft Pizza Company (employer) appealed a representative's April 19, 1995 decision (reference 03) that concluded Jason T. Latimer (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 16, 2005, in Davenport, Iowa. The claimant participated in the hearing. Nile Somerville, the assistant human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 5, 2003. The claimant worked full time as a line technician. The claimant was in a leadership position. When the claimant started working, he received a copy of the employer's workplace violence-free policy. Even though the employer does not want employees to throw objects at work, the claimant has been present when employees have thrown objects, including deli meat, the product that was packaged on the claimant's line, at one another.

On March 18, 2005, the employer told the claimant and other employees at 10:00 p.m., they were required to work mandatory overtime the next day, Saturday. The claimant was upset after he received this information because he understood the union contract indicated employees had to be told by Thursday if there would be any mandatory overtime on Saturday. The claimant visits his child every Saturday. The claimant has problems dealing with his child's mother and he knew there would be problems with her when he told her about the mandatory overtime on Saturday, March 19.

The claimant's girlfriend works with the claimant. When the claimant complained about working overtime on Saturday, she became upset with him and told him to "F off!" This set the claimant off and he threw a stack of deli meat, 9 ounces, at her. The meat hit her bump cap. Both the claimant and his girlfriend were upset. She left the area so they could both cool down. The supervisor talked to the claimant's girlfriend later that night and learned what had happened between she and the claimant.

After the incident was reported, the employer suspended the claimant on March 21, 2005. The employer then investigated the incident. The employer concluded the claimant violated the employer's workplace violence-free policy. Prior to March 18, 2005, the claimant's job was not in jeopardy and there had been no previous problems. On March 31, 2005, the employer discharged the claimant for the March 18, 2005 incident.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer suspends or discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 propriety of a suspension or discharge is not at issue in an unemployment insurance case. An employer may be justified in suspending or discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant's March 18 conduct and actions were inappropriate and gave the employer justifiable reasons to suspend and then discharge him. The facts do not, however, establish that the claimant intentionally and substantially disregarded the employer's interests. Instead, the claimant's March 18 conduct occurred after he became very upset upon learning late Friday night the employer required him to work mandatory overtime on Saturday. The claimant had compelling personal reasons for being upset when he learned about the mandatory overtime. Unfortunately, the claimant's girlfriend confronted the claimant about this matter, which resulted in the claimant's final act of throwing some meat at her. All this was done in "the heat of the moment" without the claimant thinking. While the claimant should not have let his emotions make him lose control, the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of March 20, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 19, 2005 decision (reference 03) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of March 20, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc