

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

KENNETH L DENGLER
Claimant

APPEAL NO. 11A-UI-12798-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GLOBAL INC
Employer

OC: 09/04/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 27, 2011 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Julie Stokes appeared on the employer's behalf.

This decision is identical to the decision issued for reference 02. Two determinations were issued in this case because the employer changed its payroll system in January 2011, which in turn resulted in a new account number. Even though the claimant's employment was continuous from August 2008 through August 25, 2011, the employer reported his wages under two accounts.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in August 2008. The claimant worked as a full-time line technician.

During the claimant's August 25 shift, he asked his supervisor, L.C., why he was scheduled to work that weekend when another employee had signed up to work overtime and the claimant had not. When L.C. did not give the claimant a satisfactory response, he asked her more than once why he was being forced to work overtime when other employees had signed up to work overtime. The two engaged in a verbal confrontation. Finally, L.C. finally told the claimant to shut up, do as she tells him, and go back to his work area. The claimant went back to his work area. A short time later, L.C. and another supervisor escorted the claimant out of the facility. The claimant was not told why this was happening. The employer took away the claimant's ID

badge. After the employer took the claimant's badge, he did not know if he had been discharged or suspended.

The claimant called the employer the next day to find out the status of his employment and why he had been escorted out of the building. A meeting was not set up with Stokes, the claimant, a union representative, and L.C. for several days. The claimant understood at the meeting the employer would explain why he had been escorted off the premises on August 25. Before the meeting, the claimant did not have an opportunity to talk to union officials. On the day of the meeting, a union representative asked the claimant to go with him to Stokes' office.

When the claimant went to her office, Stokes concluded he was upset when he walked into her office. The claimant became more upset and kept saying he did not understand why he was at the meeting. In an attempt to get him to calm down, Stokes asked him why he was upset. The claimant responded that L.C. did not respect him. When the meeting ended, the claimant understood the employer would get back to him about the status of his employment, but he understood he still was not allowed to return to work.

Stokes decided the claimant could return to work only after he had an assessment for anger issues. She did not tell this to the claimant or put into writing this requirement. Instead, Stokes talked to the union about this assessment. Stokes assumed the union would tell the claimant he needed an anger assessment before he could return to work.

The claimant understood from union officials that the employer required him to go to treatment. The claimant had no understanding the employer wanted him to have an anger management assessment completed. Instead, the union told the claimant he had to go to treatment. The union did not explain what kind of treatment and the claimant had no idea what treatment the employer required. Since the claimant was not working and understood he had been discharged as of August 25, he established a claim for benefits during the week of September 4, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a.

Since the employer escorted the claimant off the premises on August 25, took his ID badge, and did not allow him to return to work, the facts do not establish that the claimant intended to quit. Instead, the employer suspended and/or discharged the claimant on August 25.

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 discharge is not at issue in an unemployment insurance case. An employer may be justified in 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).

Neither L.C. nor the union representative who talked to claimant about any treatment participated at the hearing. The claimant's testimony as to what occurred on August 25 and his discussions with the union representative after Stokes' meeting must be given more weight than the employer's reliance on hearsay information from an employee who did not testify at the hearing. The claimant's testimony as to what L.C. told him indicates she became frustrated with him when he continued to question her about the schedule and overtime work. L.C. may have been justified in sending the claimant home early on August 25, but the evidence does not establish that he committed work-connected misconduct on August 25.

When the employer did not take immediate steps to resolve the issue between the claimant and L.C. and did not give the claimant permission to return to work, he was understandably upset when he talked to Stokes. When the claimant left the meeting, he understood he had been terminated. The employer did not tell him he could return to work or what he needed to do to return to work.

Since Stokes concluded the claimant was upset during the meeting, it was reasonable for her not to tell the claimant he had to have an anger management assessment before he could return to work. The employer decided that if the claimant did not have an anger issue, he would be allowed to return to work.

The claimant's employment separation occurred on August 25. Since the evidence does not establish that he committed work-connected misconduct that day, he is qualified to receive benefits as of September 4, 2011.

The primary problem in this case was the parties' failure to clearly communicate with one another. It began on August 25 and unfortunately did not improve.

DECISION:

The representative's September 27, 2011 determination (reference 03) is reversed. The employer ended the claimant's employment on August 25, 2011. The claimant did not commit work-connected misconduct. As of September 4, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw