

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANISHA L SHELTON
Claimant

APPEAL NO. 11A-UI-13942-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GLOBAL INC
Employer

OC: 11/21/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated October 17, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 22, 2011, in Davenport, Iowa. Claimant participated. The employer notified the Appeals Bureau in writing that it would not be participating in the hearing. The record consists of the testimony of Tanisha Shelton.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time production worker at the employer's Oscar Mayer plant located in Davenport, Iowa. The claimant was hired on August 19, 2009. The claimant's last day of work was September 16, 2011. The claimant was terminated on September 17, 2011, for violation of the employer's attendance policy.

The claimant was absent from work on August 20, 2011; August 21, 2011; and August 22, 2011. The claimant was ill and went to the emergency room on August 22, 2011. All absences were properly reported to the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.32(8) provides:

- (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to establish misconduct.

There is no evidence of misconduct in this record. The claimant was terminated on September 17, 2011, for absences due to personal illness that were properly reported to the employer. An absence for personal illness properly reported to the employer is an excused absence under Iowa unemployment insurance law. In addition, the length of time between the absences and the actual termination was almost one month. Even if the absences were unexcused, the absences were remote in time and could not be a current act of misconduct. The employer has failed to show misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated October 17, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs