

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY R ALVISO
Claimant

APPEAL NO. 10A-UI-01061-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

OC: 12/13/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kraft Pizza Company filed an appeal from a representative's decision dated January 12, 2010, reference 01, which held that no disqualification would be imposed regarding Tammy Alviso's separation from employment. After due notice was issued, a hearing was held by telephone on March 3, 2010. Ms. Alviso participated personally. The employer participated by Rod Warhank, Associate Human Resources Manager for Operations.

ISSUE:

At issue in this matter is whether Ms. Alviso was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Alviso was employed by Kraft from March 1, 2006 until January 12, 2010 as a full-time production worker. She was discharged due to a violation of the employer's "lock out/tag out" procedures on December 10, 2009.

On December 10, Ms. Alviso was working on a machine she had been on for three to four months. If the machine jams, the operator can slide the safety guard and reach in to remove the jam without locking out power. However, if the operator has to get inside the machine to resolve the jam, the power must be locked out. Ms. Alviso was unable to clear the jam by just reaching in. Therefore, she placed one leg inside the machine as she cleared it. She did not lock out the power before putting her leg inside the machine. As a result, she was suspended on December 10 and notified of her discharge on January 12. She did not have a history of disregarding the employer's "lock out/tag out" procedures. The above incident was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

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). Ms. Alviso was discharged for violating the employer's "lock out/tag out" procedures on December 10, 2009. The administrative law judge believes she had a good-faith misunderstanding as to precisely when she was required to lock out power. She knew she was allowed to move the safety guard to reach into the machine without locking out power. She also knew she had to lock out power before placing her body in the machine. She did not understand that simply having one leg inside the machine for balance required the power to be locked out.

At most, the employer's evidence established an isolated instance of an error in judgment or discretion. It did not establish a willful or wanton disregard of the employer's standards. Ms. Alviso did not have a history of violating the employer's safety standards. While the employer may have had good cause for discharging her, conduct that 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). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated January 12, 2010, reference 01, is hereby affirmed. Ms. Alviso was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs