

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN L CULBERSON
Claimant

APPEAL NO. 10A-UI-04178-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

OC: 02/14/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 10, 2010, reference 01, which denied benefits based upon his separation from Kraft Pizza Company. After due notice, a telephone hearing was held on April 30, 2010. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Claimant was employed by Kraft Pizza Company from August 2008 until February 10, 2010 when he was discharged from employment. Mr. Culberson worked as a full-time sanitation worker and was paid by the hour. His immediate supervisor was Clair (last name unknown).

Mr. Culberson was discharged after he was observed momentarily removing safety goggles as he performed his sanitation duties in his work area. Claimant was required to temporarily remove the safety goggles as they had become "fogged over" and he could not see through them. The claimant was unable to obtain replacement goggles that were functional as the company supplies had run out. Management was aware of the lack of safety equipment available.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

Iowa Code section 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify the denial of unemployment insurance benefits. Misconduct serious enough to warrant a discharge of employment may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The claimant appeared personally in this matter and testified that he momentarily lifted his safety goggles only because it was necessary to do so as they had fogged up and he could not see. Claimant further testified that at the time he lifted his goggles the procedure that he was performing was safe and that he had no reasonable alternatives. The record establishes the claimant had brought to the attention of the company the lack of safety goggles and informed

the company that employees were being required to use goggles past their period of efficiency as the coating on the goggles that prevented fogging would wear off within a week or two.

There being no evidence to the contrary, the administrative law judge concludes that the claimant's conduct did not rise to the level sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 10, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs