

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS C CLIBURN
Claimant

APPEAL NO: 10A-UI-17206-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIZZA HUT
Employer

OC: 09/26/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 15, 2010 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. Kelly Kramer, an area manager, appeared on the employer's behalf. 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 in 2008 as a part-time cook for the employer. There were two cooks scheduled to work nights. One worked a short shift and cooked and one worked a longer shift and prepped for the next day. Prepping included making pizza dough. The employer required that top and bottom lids be used on the dough.

Until December 2009, the claimant had a bad habit of not using one or both lids on the dough. After his manager constantly reprimanded him for failing to follow this procedure, the claimant made a concerted effort to use both lids. After December 2009, the claimant does not recall receiving any written warnings for any work-related problems. In early July 2010 his manager was not happy when the claimant did not report to a mandatory training meeting, but the claimant did not receive a written warning after showing the employer he was not scheduled to attend the meeting. The claimant did not receive written or verbal warnings in 2010 about the way he prepped dough.

In mid-August 2010, the claimant noticed he was no longer on the schedule. He asked the manager and his store manager why he was not scheduled. No one gave the claimant a reason for not being scheduled. When the claimant was not scheduled, he concluded he had been discharged, but did not know why.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer 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 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).

In mid-August 2010 when the employer did not schedule the claimant, the employer effectively discharged him. Even though the employer placed written notes in the claimant's personnel file about not reporting to the July 2010 meeting and other work-related issues, the employer did not give the claimant any written warnings in 2010. In August the employer concluded the claimant was again not putting the bottom lid on the pizza dough. The evidence does not establish this occurred when the claimant prepared pizza dough or that the employer gave him a written warning for this issue. When the claimant worked, he worked with another employee.

The employer may have had justifiable business reasons for discharging the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of September 26, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's December 15, 2010 determination (reference 03) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of September 26, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employers' account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css