

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADRIANA HERNANDES**  
Claimant

**APPEAL NO. 11A-UI-09502-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT FOODS GLOBAL INC**  
Employer

**OC: 06/26/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 19, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 11, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Stokes participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a quality assurance inspector from February 2, 2005, to June 25, 2011. The employer produces and packages processed meat products. Prior to the incident that led to the claimant's discharge, she received three written warnings about her work performance. Under the employer's policy, if she had one more work performance problem, she was subject to discharge.

On May 7, 2010, the claimant was warned about allowing defective packages to be processed. The claimant had recently been moved to a different position and had not been trained properly. Her supervisor recognized this and made sure she received additional training. On July 13, 2010, she was warned about not properly documenting oxygen checks. Again, the claimant performed the oxygen checks and wrote down the readings. Her mistake was that she did not realize that she was supposed to hold the button down on the instrument used to do the check for 10 seconds. On February 10, 2011, she was warned about putting the wrong product identification code on labels on several loads of products. She ran out of labels and had to set up a new roll. She mistakenly entered the product code for a different product, so the boxes were mislabeled and had to be redone.

On June 25, 2011, one of the claimant's responsibilities was to set up the labels to go on the boxes containing packages of products. This involves punching in numbers on a label machine. One of the entries on the box label is the expiration date. The claimant pressed the wrong key and put 2010 rather than the correct year of 2011. The claimant discovered her own error and

went to her line leader and asked that the line be stopped so the label could be fixed before the boxes were packed. The line was not stopped, and there ended up being seven loads of boxes with the incorrect dates on them. The claimant tried to get the labels fixed but only got two of seven loads corrected before she had to leave for the day. She informed a supervisor about the situation.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

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.

While the employer may have been justified in discharging the claimant under its policy, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven in this case. The last incident involved ordinary negligence, and after reviewing the prior incidents, I conclude the negligence was not of a degree that it demonstrated culpability that would equal willful misconduct. She caught her own mistaken and tried to fix it before the boxes were filled with packages.

**DECISION:**

The unemployment insurance decision dated July 19, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw