

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIANA A CLARK
Claimant

APPEAL NO. 15A-UI-13667-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GROUP INC
Employer

OC: 11/08/15
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 3, 2015, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from work on November 9, 2015 for conduct not in the best interests of the employer. After due notice was provided, a telephone hearing was held on January 5, 2016. Claimant participated. 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: Kiana Clark was employed by Kraft Foods Group, Inc. from May 4, 2015 until November 9, 2015 when she was discharged from employment. Ms. Clark was last employed as a food assembly line worker and was full time and paid by the hour. Her last immediate supervisor was Sean Whitfield.

Ms. Clark was discharged from her employment with Kraft Foods Group, Inc. on November 9, 2015 when the employer believed that Ms. Clark had taken a long break that morning and had ignored her supervisor's questioning her about the matter on the line. Because Ms. Clark had received a previous final warning that warned her that any additional work incidents might result in her termination, the employer elected to discharge Ms. Clark from her employment.

Ms. Clark had been newly assigned to the food assembly area where she was working on the morning in question. The claimant was unfamiliar with a variation in the amount of time for breaks that was being used and was unfamiliar with working on the new food assembly line. Ms. Clark went to her morning break at the time that she believed was appropriate and was unaware that in the new area the first break was of a shorter duration than in the work area where she had previously been assigned.

Upon returning from break at the time that she thought appropriate, Ms. Clark realized that other workers were on the line and that she was late. Ms. Clark encountered her supervisor at that time and her supervisor reminded the claimant not to take long breaks.

A short time thereafter, it appears that the supervisor attempted to question Ms. Clark further as she performed her duties on the food assembly line and Ms. Clark was unaware that her supervisor was trying to gain her attention due to the fact that the claimant was working on an elevated stand and wearing ear plugs and was intent on trying to catch up on a back log of product. For that reason the claimant did not know the supervisor was trying to gain her attention again. When she realized that the supervisor was attempting to gain her attention, and he repeated the caveat about not being late from break, Ms. Clark responded, "I heard you the first time."

Although Ms. Clark attempted to explain during a discharge meeting that her statement was meant to convey that she had heard her supervisor a few minutes before when she returned from the long break, it is the claimant's belief that the supervisor took her statement as to mean that the claimant was ignoring him as he attempted to speak to her on the production line.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee 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 or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8). 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).

In the case at hand, the claimant appeared personally and offered sworn testimony explaining the circumstances that led to her discharge from employment. Based upon the evidence in the record, the administrative law judge concludes that Ms. Clark did not intentionally violate company rules or disregard questions or instructions being given to her by her supervisor. Claimant was unaware of a variance in the length of break times in a different production area and the claimant was not intentionally unresponsive to her supervisor's questioning about the matter. Accordingly, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated December 3, 2015, reference 01, is reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs