

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J LENZEN
Claimant

APPEAL NO: 09A-UI-10423-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

OC: 06/14/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated July 15, 2009, reference 01, which denied benefits based upon his separation from Kraft Pizza. After due notice, a telephone conference hearing was scheduled for and held on August 7, 2009. The claimant participated personally. Participating on behalf of the claimant was Mr. Ed Broders, Attorney at Law. The employer participated by Ms. Julie Stokes, Assistant Human Resource Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered the evidence in the record, finds: Matthew Lenzen was employed by Kraft Pizza from September 3, 2008 until June 8, 2009 when he was discharged from employment. The claimant was employed as a full-time production worker and was paid by the hour.

A decision was made to terminate Mr. Lenzen from his employment after he was observed using the same package twice to check the weights of products on a company production line at the end of the production run. Company policy provides that employees performing that duty check the weights of a specified number of groups of packages each hour to determine whether the weights are within acceptable ranges.

Although Mr. Lenzen received training from the company, the claimant had been instructed by other employees that it was acceptable to take a "shortcut" at times as long as the packaging was running within the required tolerances. As the weight the claimant was taking during the incident in question was taking place at the end of the production run, Mr. Lenzen thought it acceptable to weigh one package twice under the numerous packages that he had checked the weights on.

Prior to his discharge the claimant had received no warnings or counselings from the employer regarding any violation of company policy or procedure.

REASONING AND CONCLUSIONS OF LAW:

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

In this case the evidence establishes that Mr. Lenzen had recently been assigned to the job position that required weighing of company product. Although the claimant had received training from the company, he also had been instructed by other employees that it was acceptable at times to take a "shortcut" when packaging appeared to be running within tolerances. The incident that caused the claimant's discharge took place at the end of a production run and the claimant believed that weighing one single package twice would not have a harmful effect on the company or its product. Based upon information that he had received from other workers, the claimant believed his action to be harmless.

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 denial of unemployment benefits. Misconduct that is serious enough to warrant the discharge of an employee may not be serious enough to warrant the denial of unemployment 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 1992).

The question in this case is not whether the employer has a right to discharge Mr. Lenzen for misconduct but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the administrative law judge concludes based upon the evidence in the record that the claimant's conduct was in the nature of an isolated instance of poor judgment in an otherwise unblemished employment record. As such, the claimant's conduct did not rise to the level of misconduct sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated July 15, 2009, reference 01, is reversed. The claimant was dismissed for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed