

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID N BAKER**  
Claimant

**APPEAL NO. 09A-UI-15141-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**Original Claim: 08/16/09  
Claimant: Appellant (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

David Baker filed a timely appeal from the September 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 10, 2009. Mr. Baker participated. Tanya Jones, Associate Human Resources Manager, represented the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: David Baker was employed by Kraft Pizza Company as a full-time mixer/cure injector from August 2008 until August 14, 2009, when the employer suspended him for alleged dishonesty in the context of an investigation. The employer subsequently discharged Mr. Jones from the employment on August 27, 2009.

Mr. Baker's duties involved using a giant mixing machine to mix batches of meat product. Mr. Baker had to follow a recipe and add the appropriate quantity of each ingredient. On August 13, 2009, Mr. Baker mixed a batch of meat product and another employee off-loaded the product from the mixing machine into multiple vats. The quantity of produce off-loaded was less than would be expected if Mr. Baker had properly followed the recipe. The employer's policies required that Mr. Baker notify a supervisor if the quantity of product varied more than 300 pounds from the quantity of the ingredients. Mr. Baker was aware of the policy. Sometimes product would remain stuck in the mixing machine. The off-loader initially weighed the vats of product and concluded the product was short. Mr. Baker reweighed one or more of the vats. Mr. Baker concluded that off-loader had made an error in weighing one of the vats, but that the total output was still 1,300 pounds less than what it should be. Mr. Baker subsequently reported to the employer that he had located the missing product in the machine. Another employee alleged to the employer that Mr. Baker had mixed additional ingredients to make up for the shortage. The employer did a salt analysis of the meat product associated with the batch

in question. The employer determined the vats did not all have the same salt content. The employer concluded the vats could not have been mixed together as part of the same batch. The employer concluded Mr. Baker had misrepresented his actions. The employer suspended Mr. Baker for alleged dishonesty and followed up by having the union notify Mr. Baker he was discharged.

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

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 a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty 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 actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to prove misconduct by a preponderance of the evidence. The employer failed to present testimony from persons with personal knowledge of the events in question. The employer had the ability to present more direct and satisfactory evidence. Mr. Baker provided a plausible explanation for the events leading up to his suspension and discharge. The employer conceded product could get stuck in the giant mixer. The employer provided insufficient evidence to rebut Mr. Baker's explanation.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Baker was discharged for no disqualifying reason. Accordingly, Mr. Baker is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Baker.

**DECISION:**

The Agency representative's September 23, 2009, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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