

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY J VALLEJO
Claimant

APPEAL NO: 10A-UI-07869-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

OC: 10/04/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's May 28, 2010 decision (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. Telephone hearings were scheduled on July 15, July 27 and August 26. Last minute postponements were granted to the employer on July 15 and 27. After the July 27 postponement, the employer's representative's was told the employer would receive no more last minute postponements. The morning of August 26, the employer's representative called to let the Appeals Section know the employer would not be participating in the August 26 hearing. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 16, 1990. The claimant worked full time.

The claimant had some attendance issues. After the employer discharged the claimant for attendance issues, in late November 2009 the employer reinstated the claimant as an employee. The claimant understood that if she had continued attendance problems, the employer could discharge her. The claimant did not have any attendance issues until April 7, 2010. The claimant agreed to come in early to set up for another employee. The claimant understood the employer wanted employees who set up to report to work at 3:18 a.m. The claimant's shift and production started at 4 a.m. On April 7, the claimant had to get her blood sugar level under control before she reported to work. As a result, the claimant did not report to work until 3:28 a.m. Even though the claimant was about ten minutes late, she had everything set up for production before 4 a.m.

The claimant has asked the employer if another person can be assigned to set up for production because of medical issues she experiences when she has to get up earlier to set up. When the

claimant was scheduled to set up, her schedule for taking insulin was altered. The claimant's supervisor would not take the claimant off the set up job.

The claimant was on vacation the week of April 12 and had no problems with her blood sugar levels. On April 21, the claimant was again scheduled to do set up. She was about seven minutes late because she had to take care of her blood sugar level before she reported to work. The claimant had all the set up work done before 4 a.m. On May 4, the claimant's supervisor talked to her about reporting to work late on April 7 and 21. The claimant explained why she had been late and that all the set up work had been done before 4 a.m. On May 6, 2010, the employer discharged the claimant for reporting to work late in April after the employer reinstated her as an employee in November 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant understood that if she had continued attendance issues after the employer reinstated her in November 2009, the employer could discharge her. The claimant had problems keeping her blood sugar under control when she was scheduled to set up before production began. The claimant took reasonable steps by asking if someone else could do the set up so she could keep her blood sugar level under control. Her supervisor denied this request.

The claimant did not have any attendance issues until April 7 when she was about ten minutes late to set up for production. On April 7 and 21, the claimant had to get her blood sugar level under control before she could report to work. On both days, the set up was completed before 4 a.m. when production began.

While the employer may have had justifiable business reasons for discharging the claimant on May 6, the evidence does not establish that she intentionally failed to work as scheduled. The facts do not show that the claimant committed a current act of work-connected misconduct. Therefore, as of May 9, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's May 28, 2010 decision (reference 02) is reversed. The employer discharged the claimant for business reasons, but did not establish that she committed work-connected misconduct. As of May 9, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs