

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSA OJIEDA
Claimant

APPEAL NO. 10A-UI-11573-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

OC: 06/27/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 13, 2010, reference 01, which held claimant not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on November 8, 2010. Claimant participated personally. The employer participated by Ms. Tonya Jones, Assistant Human Resource Manager. Employer's Exhibit One was received into evidence.

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 all of the evidence in the record, the administrative law judge finds: Rosa Ojieda was employed by Kraft Pizza Company from February 13, 2008 until June 26, 2010 when she was discharged from employment for violation of company policy. Ms. Ojieda held the position of full-time production worker and was paid by the hour. Her immediate supervisor was Chris Meineke.

The claimant was discharged after she left work without authorization on June 25, 2010 prior to the end of the work shift. The claimant had been placed in a floater type position that day as she had just returned from a period of time away from work and had not been scheduled back into regular production line. Claimant was scheduled to work from 6:30 a.m. that day until 5:30 p.m. Ms. Ojieda was instructed to fill in for an employee that had to leave the production line to attend a meeting and was specifically instructed by her supervisor to wait in a specific room across the hall from the production floor until the lead line tech gave her another work assignment.

Ms. Ojieda completed filling in for the employee in the production line and then looked for the lead line tech. When she could not find the line tech or immediate supervisor, the claimant took it upon herself to clock out for the day at 3:00 p.m.

The company has a strict policy prohibiting employees from leaving early without the specific permission of management. The policy is contained in the company handbook and is posted. Other supervisory personnel were present at the facility however the claimant did not seek permission to leave early. The claimant also did not visit the company's human resource department in an attempt to obtain authorization to leave prior to the end of her scheduled work shift.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 evidence in the record establishes that the company places strong emphasis on its rule that employees are not allowed to leave prior to the end of their work shift unless they obtain the specific permission from their immediate supervisor or company management. The employer operates a production facility where it is necessary to have employees available to perform tasks and the employer has a legitimate business interest in assuring that all employees are accounted for throughout the scheduled work shift.

The requirement that employees obtain the permission of management before leaving employment is well known and is posted in conspicuous locations at the workplace. Although Ms. Ojieda was specifically instructed to wait in a designated area for further instructions, she chose not to do so but instead to leave the facility two hours before the ending of her work shift without obtaining any permission from management or informing management that she was leaving.

The administrative law judge concludes based upon the evidence at the hearing that the claimant knew or should have known that leaving without the authorization of management was a serious policy violation and could jeopardize her employment with the company.

Based upon the evidence in the record and the application of the law, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated August 13, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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