

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLOR J WILKE**  
Claimant

**APPEAL NO. 09A-UI-07308-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT FOODS GLOBAL INC**  
Employer

**OC: 04/12/09**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated May 4, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, the telephone conference hearing was scheduled for and held on June 5, 2009. Claimant participated personally. The employer participated by Ms. Cindy Plantz, human resource manager and Mr. Brian Strong, operations supervisor.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record finds that claimant was employed as a production worker for the captioned company from November 10, 2008 until April 2009, when he was discharged from employment. Mr. Wilke was employed on a full-time basis and was paid by the hour.

The claimant was discharged for leaving work prior to the end of the work shift on April 11, 2009, without the authorization or knowledge of company management. On that day, the claimant had requested to take the last one-half of the shift off work because he was "not feeling well." The claimant was initially told by Strong, the operations manager on duty, that Mr. Strong would check and see if there was sufficient staffing. The claimant was called back by Mr. Strong and specifically advised that permission to leave was not granted as the line was being shut down and Mr. Wilke's services were needed to regain production. Mr. Strong's denial of the request to leave was overheard by another employee and noted as a business record. Although the claimant had been reminded by an assistant operations supervisor to specifically obtain the permission of Mr. Strong before leaving, Mr. Wilke did not do so. Subsequently, production employees reported to Mr. Strong that the claimant had left the plant. After it was determined that the leaving was without authorization or without the specific

knowledge or permission of management, the decision was made to terminate Mr. Wilke from his employment. Company employees are aware that they are expected to receive specific permission before leaving and are required to provide notice to company management if they are leaving work early or otherwise altering their work shift.

It is the claimant's position that he "believed" that he had been told that he was authorized to leave when a production line shut down took place, and did so. Mr. Wilke did not indicate to Mr. Strong or other management, the necessity that he leave work for medical reasons, but had indicated only earlier in the day that he was "not feeling well."

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

The employer has sustained, by a preponderance of the evidence, its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The evidence in the record establishes that the claimant knew or should have known that permission to leave early was necessary before leaving work and that employees were required to provide notice to the employer that they were changing their set scheduled work shift.

The evidence in the record establishes the claimant had been specifically told that he was not authorized to take paid time off that afternoon as his services were needed by the company. Claimant did not indicate to his employer any immediate need to leave for medical reasons, but only had stated that he was "not feeling well" and when permission was declined, the claimant had stated that he "understood." The employer thus reasonably concluded that the claimant would continue to work throughout his scheduled work shift in the absence of any specific permission by employment management for the claimant to leave early or otherwise vary his shift.

The evidence also establishes that the claimant had been reminded by an assistant supervisor to specifically obtain the permission of Mr. Strong if Mr. Wilke was considering leaving work prior to the end of his shift that day. In spite of the warning given, the claimant did not re-contact Mr. Strong and did not receive specific permission to leave nor inform Mr. Strong that he was leaving prior to the end of the work shift. Claimant was given an opportunity to provide this explanation to his employer prior to being discharged, but did not do so.

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.

Claimant was discharged for misconduct and unemployment insurance benefits were withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated May 4, 2009, reference 01, is reversed. Tylor Wilke is disqualified and benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

srs/pjs