

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALAN PLUMB**  
Claimant

**APPEAL NO. 11A-UI-05215-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**OC: 03/13/11**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kraft Pizza Company filed an appeal from a representative's decision dated April 7, 2011, reference 01, which held that no disqualification would be imposed regarding Alan Plumb's separation from employment. After due notice was issued, a hearing was held by telephone on May 16, 2011. Mr. Plumb participated personally. The employer participated by Tanya Jones, Human Resources Manager. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Plumb was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Plumb was employed by Kraft from July 1, 1998 until March 18, 2011. He worked full time in production. He was discharged as a result of an incident on February 14, 2011. On that date, his job was to catch product as it came off a conveyor and place it in a clean bin. If product happens to fall on the floor, it is to be placed on the "inedible" cart.

On February 14, Mr. Plumb left the conveyor to get clean bins. While he was gone, three sticks of product fell on the floor. When he returned, he picked them up and placed them in the same cart with "clean" meat. His actions were observed by a quality assurance team member. He was absent from work on February 15 and 16. Mr. Plumb continued to work his normal job until he was suspended on March 4. When questioned on March 4, he acknowledged his conduct and indicated he was having a bad day. He was notified of his discharge on March 8, 2011. The above matter was the sole reason for the discharge.

## REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was prompted by a current act of misconduct. See 871 IAC 24.32(8). In the case at hand, the employer was aware of Mr. Plumbs February 14 conduct the same day it occurred. However, the matter was not discussed with him until approximately three weeks later. With the exception of February 15 and 16, he was at work each workday during the interim. He was given no notice that he was being considered for discharge. For the above reasons, it is concluded that the discharge was not predicated on a current act of misconduct.

Even if the February 14 incident were considered a current act, there would still be no basis for disqualification. This was the one and only time Mr. Plumb put contaminated product with clean product. The administrative law judge does not believe he deliberately or intentionally violated the employer's standards. It appears that this mind was elsewhere at the time. At most, his actions represented an isolated instance of negligence during his almost 13 years of employment with Kraft. Conduct so characterized is not considered misconduct within the meaning of the law. See 871 IAC 24.32(1). While the employer may have had good cause to discharge Mr. Plumb, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

## DECISION:

The representative's decision dated April 7, 2011, reference 01, is hereby affirmed. Mr. Plumb was discharged by Kraft but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css