

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JAMES W LEWIS  
1112 – 18½ AVE  
ROCK ISLAND IL 61265**

**KRAFT PIZZA CO  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-07252-LT  
OC: 06-18-06 R: 12  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the July 11, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 8, 2006. Claimant participated. Employer opted not to participate. The issue is whether claimant was discharged for reasons related to job misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time sanitation worker through June 20, 2006 when he was discharged. Claimant was required to wear an employer-provided uniform to work on the line but was not allowed to clock in before changing into the uniform. He was not allowed to wear clothing from

outside the plant. On June 20, he arrived at the plant and changed clothes and then clocked in at 5:48 a.m. for his 5:45 a.m. shift. His supervisor said the time clock showed him to be one second tardy as it ticked from 5:47 to 5:48 a.m. just as he clocked in. A two-minute window from 5:45 to 5:47 a.m. was allowed.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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(7) and (8) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

Chapter 91 of the Code of Iowa requires payment of wages for all hours during which an employee's presence is required. Thus, Kraft Pizza Co. is responsible to pay wages to its employees from the time they are required to report to work and change into uniforms through the time they change out of those uniforms at the end of the shift and not merely from arrival in uniform on the line and until departure from the line. Thus, since claimant was not allowed to clock in until after he had already changed into his required uniform that he could not wear from home, he was not tardy. The U.S. Department of Labor in Davenport (phone 563-324-2038) or Iowa Labor Services Division in Des Moines (toll free at 1-800-JOB-IOWA) handling wage claims have more detailed information available to the parties. Further information is available online at: <http://www.dol.gov/esa/whd/> and <http://www.iowaworkforce.org/labor/>.

Since employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The July 11, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/cs