

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E LEE
Claimant

APPEAL NO. 13A-UI-03694-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

**OC: 02/10/13
Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2013, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on May 1, 2013. Claimant David Lee did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jonathan Parker, General Manager, represented the employer. The administrative law judge took official notice of the agency's administrative records (DBRO and DBIN), which indicate that no benefits have been disbursed to the claimant in connection with the claim that was effective February 10, 2013.

ISSUE:

Whether Mr. Lee was discharged for misconduct in connection with the employment that disqualifies Mr. Lee for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Lee was employed by NPC International, Inc., d/b/a Pizza Hut, as a part-time line cook from June 2012 until January 16, 2013, when Jonathan Parker, General Manager, discharged him for attendance. Mr. Lee was usually scheduled for 10 hours per week and his scheduled shifts were usually on Friday and Saturday, from 2:00 p.m. to 7:00 p.m. This was the employer's "ready for revenue" period during which the employer prepared for the busy Friday and Saturday evening dinner rush. Mr. Lee was absent for personal reasons on October 12, 13, 19, 20 and 27. Mr. Lee was absent for personal reasons on November 16 and 17, December 14 and 15, December 28 and 29, and January 11, 12 and 16. The employer's absence reporting policy required that Mr. Lee notify the employer at least two hours before the start of the shift if he needed to be absent. Mr. Lee would usually notify the employer minutes before the scheduled start of his shift. Mr. Lee's reasons for being absent were usually lack of transportation or unspecified personal business. The final absence was for unspecified personal business. None of the absences were for illness. While the employer did not issue written reprimands to Mr. Lee, Mr. Parker did verbally counsel Mr. Lee on multiple occasions about the need to appear for work.

REASONING AND CONCLUSIONS OF LAW:

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.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes 14 unexcused absences between August 2012 and January 16, 2013. The discharge followed three unexcused absences in the preceding week. Mr. Lee's unexcused absences were excessive and constituted misconduct in connection with the employment. Mr. Lee was discharged for misconduct. Accordingly, Mr. Lee is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

Because no benefits have been disbursed in connection with the claim, there is no overpayment of benefits to address.

DECISION:

The Agency representative's March 18, 2013, reference 02, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs