

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HENRY L RANDLE
Claimant

APPEAL NO. 13A-UI-07233-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

OC: 06/02/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 17, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice a hearing was held on August 8, 2013, in Davenport, Iowa. The claimant participated personally. The employer failed to show up for the hearing and did not participate. The record consists of the testimony of Henry Randle.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Pizza Hut restaurant. The claimant was hired as a full-time driver and dishwasher in 2005. He was terminated on May 30, 2013.

The incident that led to the claimant's termination occurred on May 30, 2013. The claimant was stopped by the police and the officer saw a small amount of marijuana on the dashboard of the car. The claimant was charged with possession of marijuana. When he told his employer about the charge, he was terminated. The claimant has pled guilty to the charge but the sentence has not yet been determined.

The claimant was not aware of any written policy from the employer concerning alcohol and drug use. The employer did not participate in the hearing and produced no evidence of a policy that would lead to the claimant's termination.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is not enough evidence in this record to establish misconduct because the employer chose not to participate in the hearing. A critical and lacking piece of evidence was whether the employer had a specific rule prohibiting the claimant's possession of marijuana. See Kleidosty v. EAB, 482 N.W.2d 416, 418 (Iowa 1992) In Kleidosty, the Court stressed the importance of a specific policy, even one which was stated only in terms of immoral and illegal conduct. Since there is no evidence of employer policy, there is insufficient evidence upon which to base a disqualification. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated June 17, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css