

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M WIEBKE
Claimant

APPEAL NO. 10A-UI-13774-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

**OC: 07/25/10
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pizza Hut (employer) appealed a representative's September 29, 2010 decision (reference 01) that concluded Lisa Wiebke (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 10, 2010. The claimant participated personally. The employer participated by Brad Babcock, Area Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 27, 2007, as a part-time shift manager. The claimant signed for receipt of the employer's handbook and harassment policies on July 27, 2007. The employer issued the claimant two written warnings for forgetting to complete paperwork and enforce rules with staff.

On July 25, 2010, the claimant was working with a subordinate and it was a busy night. The subordinate handled a survey call incorrectly, causing the claimant to fail the survey. The claimant told the subordinate what she had done wrong. The subordinate complained to coworkers that the claimant yelled at the subordinate in front of customers. The subordinate told to the employer that she was afraid of the claimant even though the two continued to exchange pleasantries and work together.

The claimant was unaware of the subordinate's actions until she heard coworkers talking about the subordinate's complaints. On July 28, 2010, the employer verbally reprimanded the claimant for making the subordinate feel threatened. The employer told the claimant to remain

calm and try not to yell when business is hectic. The claimant told the employer that she had remained calm and did not yell.

After work at approximately 9:30 p.m. the claimant called the subordinate and asked why she was telling people that the claimant had yelled at her. The cellular telephone died and the conversation was not complete. Later the subordinate texted the claimant saying her battery had been low and the call had dropped.

The subordinate told the employer that she felt harassed and intimidated by the claimant's call on July 28, 2010. On July 30, 2010, the employer terminated the claimant

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony

but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The claimant was warned that she had to enforce rules with subordinates. The claimant tried to enforce the rules and the employer did not protect the claimant from claims by the subordinate. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 29, 2010 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css