

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NADER J FRIJAT
Claimant

APPEAL NO. 07A-UI-02353-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

OC: 01/21/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

NPC International, Inc., doing business as Pizza Hut, filed a timely appeal from an unemployment insurance decision dated February 27, 2007, reference 01, that allowed benefits to Nader J. Frijat. After due notice was issued, a telephone hearing was held March 26, 2007, with Mr. Frijat participating. Restaurant General Manager Lexington Gullion participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

Did the claimant leave work voluntarily?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nader J. Frijat was employed as a delivery driver at a Pizza Hut restaurant owned and operated by NPC International, Inc., from 2002 until he was discharged by Shift Manager Ashley Michaleck on December 29, 2006. Mr. Frijat had just returned from a delivery. Ms. Michaleck had cashed him in. As he picked up the pizzas for his next delivery, Ms. Michaleck, under considerable stress because of a busy Friday evening, told him to go home. This was language Ms. Michaleck had used in the past to discharge employees. General Manager Lexington Gullion was in the vicinity but did not intervene in the situation. Ms. Gullion did not call Ms. Michaleck to testify.

REASONING AND CONCLUSIONS OF LAW:

The employer contends that Mr. Frijat resigned from his employment. Mr. Frijat contends that he was discharged. The employer has the burden of establishing that a separation is a quit rather than a discharge when the parties disagree as to the characterization. See Iowa Code section 96.6-2. As noted above, Ms. Gullion did not call Ms. Michaleck to testify, although Ms. Michaleck was the manager in direct contact with Mr. Frijat. The administrative law judges finds the employer's evidence unpersuasive. He finds no evidence that Mr. Frijat desired to end the employment. He concludes that Ms. Michaleck discharged Mr. Frijat out of frustration during a busy Friday night.

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 to disqualify following a discharge, the employer must establish by a preponderance of the evidence that the claimant was discharged for misconduct in connection with the employment. No hint of misconduct exists in this record. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated February 27, 2007, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw