

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHAN L HINGTGEN**  
Claimant

**APPEAL NO: 10A-UI-00086-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC  
PIZZA HUT**  
Employer

**OC: 11/29/09  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated December 24, 2009, reference 01, that held he was discharged for misconduct on November 29, 2009, and benefits are denied. A telephone hearing was held on February 11, 2010. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time cook on January 17, 2007, and last worked for the employer as a cook/driver on November 25, 2009.

The employer discharged the claimant for being late to work, but re-hired him on December 4 on a part-time, work basis. The claimant resumed work on December 9.

The employer failed to respond to the hearing notice.

**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(7) 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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on November 25, 2009, for excessive absences.

The fact that the employer re-hired the claimant within ten days of discharge suggests his absenteeism or tardiness was not so serious as to constitute job disqualifying misconduct. The employer failed to participate and establish misconduct in this case.

**DECISION:**

The department decision dated December 24, 2009, reference 01, is reversed. The claimant was not discharged for misconduct on November 25, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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