

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**REBECA K TOMPKINS**  
Claimant

**APPEAL NO. 18A-UI-03390-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC**  
Employer

**OC: 02/04/18**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

NPC International (employer) appealed a representative's March 5, 2018, decision (reference 02) that concluded Rebeca Tompkins (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 9, 2018. The claimant participated personally and through Devin Day, friend. The employer participated by Amber Kunkle, General Manager, and Bonita Pevey, Unemployment Insurance Consultant. Exhibit D-1 was received into evidence.

**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 April 17, 2017, as a part-time shift lead working at the Pizza Hut in Eldridge, Iowa. In November 2017, the claimant began working at Davenport, Iowa, location. The employer had a handbook but the claimant did not receive a copy of it. The handbook contained a policy that required employees to notify the employer two hours in advance by telephone if the employee were to be absent. They had to find another employee to cover the shift and provide the employer with a doctor's note. The claimant did not see this policy. Her general manager never told her that a text was not acceptable. The claimant always notified the employer at least two hours in advance of the start of the shift and provided a doctor's note. She did not know she had to find someone to cover her shift. The employer never issued her any written warnings during her employment informing her of her shortcomings. The handbook states that employees will receive warnings for attendance before being terminated.

On February 1, 2018, the claimant reported her absence to the general manager. The general manager told her to bring in her keys and a doctor's note. The claimant could not work for her anymore because she was absent too frequently. On February 2, 2018, the claimant brought in

the store keys and the doctor's note for her absence on February 1, 2018. The general manager said she could work through the end of the schedule, February 6, 2018, and then she would be transferred back to Eldridge, Iowa. There was no further work for the claimant at that store after February 6, 2018. On February 6, 2018, the claimant called the Eldridge, Iowa, general manager. He told her there was no work for her in Eldridge, Iowa, or with that employer.

The claimant filed for unemployment insurance benefits with an effective date of February 4, 2018. The employer participated personally at the fact finding interview on March 2, 2018, by Bonita Pevey. She did not have firsthand knowledge of the events leading to the separation or contact information for a person with that information.

### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on February 1, 2018. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's March 5, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs