

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A TRACY**  
Claimant

**APPEAL NO. 07A-UI-04326-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC – PIZZA HUT**  
Employer

**OC: 04/01/07 R: 04  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

NPC International, Inc. filed an appeal from a representative's decision dated April 17, 2007, reference 01, which held that no disqualification would be imposed regarding Elizabeth Tracy's separation from employment. After due notice was issued, a hearing was held by telephone on May 14, 2007. Ms. Tracy participated personally. The employer participated by Vickie Hulke, Restaurant General Manager, and Kay Surls, Area General Manager. Exhibits One through Six were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Tracy was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tracy was employed by NPC International, Inc., doing business as Pizza Hut, from December 27, 2005 until March 30, 2007. She was employed as a server, driver, and in production at the employer's location in Maquoketa, Iowa. She worked from 20 to 27 hours each week. On or about March 30, she was given the option of transferring to a different restaurant or being terminated. The employee warning of March 20 clearly indicates that Ms. Tracy had the "choice of transferring to another store or being terminated." The warning also indicated that she had to make her decision immediately. See Exhibit Three. Ms. Tracy could have transferred to a Pizza Hut in Cedar Rapids, one hour from her home, or to one in the Quad Cities, approximately 30 minutes from her home. Ms. Tracy chose not to transfer.

Ms. Tracy was given the above options because the employer believed she was having a romantic relationship with Andrew Hamilton, a shift manager and delivery driver. Mr. Hamilton was considered a member of management but Ms. Tracy was not. The employer has a policy that prohibits managers from having a sexual or emotional relationship with employees under their direct or indirect supervision. Ms. Tracy and Mr. Hamilton are not romantically involved but

have been friends for a number of years. Mr. Hamilton was not given the option of transferring or leaving because the manager saw Ms. Tracy first.

Ms. Tracy received a warning on February 1, 2007 because a customer objected to a comment she made to the customer's husband. There were no other formal disciplinary actions on her record.

#### **REASONING AND CONCLUSIONS OF LAW:**

Ms. Tracy did not voluntarily quit her employment with Pizza Hut. She was told she could transfer to a different restaurant or be terminated. If she chose to transfer, she would have to relocate to a restaurant at least 30 minutes from her home, whereas she had been working in the town where she lived. Given the additional commute, it was not unreasonable for Ms. Tracy to decline to transfer. Her job was not one where she would expect to be transferred at the discretion of the employer. It was clear from the employer's evidence that Ms. Tracy would no longer have a job at the Maquoketa Pizza Hut. The paperwork indicated she could transfer or be terminated. Inasmuch as she declined the transfer, the only other option was termination. For the above reasons, the administrative law judge concludes that the employer initiated the separation when Ms. Tracy was advised that she could no longer work at the location where she had been working. Therefore, the separation is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was prompted by a current act of misconduct. See 871 IAC 24.32(8). In the case at hand, Ms. Tracy's discharge was triggered by the fact that the employer believed she was having a romantic relationship with a manager, in violation of a known work rule. The employer failed to establish that Ms. Tracy and Mr. Hamilton were, in fact, romantically involved. Moreover, as the administrative law judge reads the policy, the onus is on the manager to avoid romantic involvement with subordinates. The policy states that "management" must not date or become involved with individuals they supervise, either directly or indirectly. It would seem that if anyone was in violation of the policy, it was Mr. Hamilton, a member of management. For the reasons stated above, it is concluded that Ms. Tracy did not violate the employer's policy regarding work relationships.

The employer has failed to establish that Ms. Tracy's discharge was based on a current act that constituted misconduct within the meaning of the law. Therefore, the administrative law judge is not free to consider other, past acts that might constitute misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that the employer has failed to satisfy its burden of proving misconduct. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated April 17, 2007, reference 01, is hereby affirmed. Ms. Tracy was discharged by Pizza Hut, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw