

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI D FULTON**  
Claimant

**APPEAL NO. 07A-UI-09164-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC  
PIZZA HUT**  
Employer

**OC: 08-26-07 R: 03  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 20, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 15, 2007. The claimant did participate. The employer did participate through Bruce Johnson, Area Manager for NPC International.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a shift manager full time beginning February 10, 2005 through August 24, 2007 when she was discharged.

The claimant was discharged for mishandling cash after a deposit turned up missing. On August 22, the employer discovered that a deposit the claimant handled on July 21 in the amount of \$1,288.53 was missing. Mr. Johnson went to the bank and was told that no deposit of \$1,288.53 was made on July 21. Paperwork completed by the claimant indicated that she made a deposit after the business closed on July 21, 2007 in the amount of \$1,288.53. Mr. Johnson questioned the claimant about the July 21 deposit on August 22. The claimant told him that she had filled out the paperwork to indicate that she had made a bank deposit on July 21, but alleged that she left the deposit bag in the safe and had not taken it to the bank. According to the claimant the deposit was missing from the safe. The claimant indicated that it was a common practice among the managers and shift managers to leave deposits in the safe overnight even while indicating on the deposit log that the deposit had actually been taken to the bank. Mr. Johnson confirmed that since the claimant's discharge, he had spoken to the manager about following the policy that required a deposit be taken to the bank at the close of business every day.

Around the same time the employer learned of the missing July 21 deposit, they also learned that another deposit, also handled by the claimant on July 28 in the amount of \$1700.03 was missing. The claimant admitted that she had dealt with the July 28 deposit, but again alleged that she had left the deposit in the safe overnight. For the July 28 deposit the claimant did not indicate on the log that she had taken it to the bank as she did with the July 21 deposit.

The claimant was verbally disciplined in June of 2007 about following cash handling procedures when another deposit she handled was missing for two days.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not

necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The manager and shift managers, including the claimant were routinely leaving deposits in the safe overnight instead of taking them to the bank. The manager, claimant's supervisor, was aware of this conduct and did not discipline the claimant or reprimand her for failing to follow the procedure. Mr. Johnson confirmed that the manager did not begin enforcing the deposit policy until after he spoke to her about it after the claimant was discharged. While it is certainly suspicious that two deposits disappear from the safe within a one-week time period, the employer has not established that the claimant knew or should have known that leaving the money in the safe was a violation of company policy which could jeopardize her employment. The claimant was entitled to fair warning that the employer was no longer going to tolerate her performance and conduct, that is, not taking the deposit to the bank instead of leaving them in the safe. Without fair warning, the claimant had no way of knowing that there were changes she needed to make in order to preserve her employment.

The administrative law judge is not persuaded that an ex-employee broke into the store and stole the deposits from a time-locked safe. However, the employer had not previously warned claimant about any of the issues leading to the separation, and has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

**DECISION:**

The September 20, 2007, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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