

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN MACTAGGART
Claimant

APPEAL NO: 07A-UI-05619-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

**OC: 04-22-07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 25, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 20, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Paula Brockert, General Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cook/delivery driver for Pizza Hut from March 31, 2006 to April 29, 2007. On November 14, 2006, the claimant received a written warning for failing to show up for her scheduled shift. On April 11 or 12, 2007, the claimant told General Manager Paula Brockert that she was supposed to go out of town April 13 and 14, 2007, with her family but forgot to ask for the time off. Several other employees asked for that weekend off as well and there was no one that could work for the claimant. Ms. Brockert told the claimant she had to work her scheduled shifts April 13 and 14, 2007, or find a replacement. The claimant did not do either one so the employer terminated her employment effective April 29, 2007.

The claimant has not claimed or received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While the claimant had plans to go out of town with her family, she failed to request time off from the employer and because it was a busy weekend the employer could not accommodate her late request. The claimant chose to go out of town knowing that she was placing her job in jeopardy. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The May 25, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs

