

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL J HERRON
Claimant

APPEAL NO. 10A-UI-12944-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

**OC: 07/25/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated September 10, 2010, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on November 1, 2010. The claimant participated personally. The employer participated by John Snell, General Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Rachel Herron was employment by Pizza Hut from June 2007 until June 10, 2010 when she was discharged from employment. Ms. Herron worked as a part-time server and was paid by the hour. Her immediate supervisor was John Snell.

The claimant was discharged on or about June 10, 2010 when she was unable to report for scheduled work due to a conflict with other employment. The claimant had informed Pizza Hut that she would not be able to work on specified days of the week due to other employment with Bass Pro. Although it had been agreed that she would not be scheduled on those days, the claimant was nevertheless scheduled to work and was unable to report to Pizza Hut due to the conflict in scheduling.

The general manager, Mr. Snell, believes that Ms. Herron had received a number of verbal warnings. The employer is unsure of the dates or the contents of the warnings.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling or unable to furnish evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

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(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.

In this case company management made a decision to terminate Ms. Herron when she was unable to report for scheduled work due to a conflict with other employment. The claimant had informed Pizza Hut of the days that she was unavailable for part-time employment and believed that she would not be scheduled on those days. The claimant was discharged when she was unable to leave her other employment on a day that she believed that she had been not scheduled to work at Pizza Hut.

The evidence in the record does not establish that the claimant had been sufficiently warned prior to her discharge or that the claimant had intentionally violated Pizza Hut's interests or standards of behavior by being unavailable for work on a day that she believed that she would

not be scheduled to work at Pizza Hut. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 10, 2010, reference 02, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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