

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAPRI D GLEASON
Claimant

APPEAL NO. 07A-UI-10546-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

**OC: 10-14-07 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 7, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 17, 2007. The claimant did not participate as she was not available when the administrative law judge called to begin the hearing. The employer did participate through Paul Vogelsberg, General Manager. Employer's Exhibit One was received.

ISSUES:

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

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 part time beginning August 30, 2006 through July 18, 2007 when she was discharged.

The manager, Paul Vogelsberg, was out of town working in another state for a few weeks. When he returned to the store where he was the claimant's supervisor, he noticed that the inventory numbers were out of line. In order to determine why the inventory numbers were so far off, he began investigating transactions.

Mr. Vogelsberg discovered that the claimant had voided a transaction for \$26.73 that occurred on July 16, 2007. In order to void the transaction, she had to have another employee sign off on the transaction. Dustin Ritter denies signing the void ticket. The pizza order was placed at 6:28 p.m. and voided at 7:55 p.m. Dustin Ritter left work on July 16 at 7:35 p.m. The claimant clocked him back in for one minute on July 16 in order to void the sales ticket under his name. Mr. Ritter's statement makes clear that he did not participate in the void of the sales ticket. When Mr. Vogelsberg asked the claimant about the transaction, she indicated that the order had been placed, but the customer did not arrive to pick up the food. Mr. Vogelsberg contacted the

customer who indicated that they had indeed picked up the order and paid for the food with a check. Mr. Vogelsberg contacted the bank who sent him a copy of the check which matches the name on the customer order. When confronted with that information, the claimant said she had accidentally made the void but she had no explanation for why the transaction was not punched back into the system. The cash drawer was not over for the shift the claimant worked when the void was made. The claimant was discharged for dishonesty.

The claimant has received unemployment benefits since filing a claim with an effective date of October 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant engaged in a fraudulent transaction by voiding a ticket that should not have been voided. The administrative law judge is not persuaded that it was an accident or the claimant would have simply punched the ticket back into the system. The claimant also violated the employer's rules by punching in another employee and forging his name on the void ticket. The claimant's actions constitute disqualifying misconduct. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The November 7, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. 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. The claimant is overpaid benefits in the amount of \$1,062.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css