

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MICHAEL A LEE  
2836 DEAN AVE  
DES MOINES IA 50317

NPC INTERNATIONAL INC  
PIZZA HUT  
c/o JON-JAY ASSOCIATES INC  
P O BOX 182523  
COLUMBUS OH 43218-2523

Appeal Number: 04A-UI-02744-DWT  
OC 02/01/04 R 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Michael A. Lee (claimant) appealed a representative's March 1, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of NPC International, Inc., doing business as Pizza Hut (employer), would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2004. The claimant participated in the hearing. Amy Parker, the area general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The employer hired the claimant to work as a delivery driver on July 21, 2003. The employer's policy indicates employees must contact the employer two hours before they are scheduled to work when they are unable to work as scheduled. During a meeting, the claimant asked what he should do when no one is at work by 8:00 a.m., or the time the policy indicates he must contact the employer. Based on the employer's answer, the claimant understood that as long as he called in before his shift he would not get into trouble.

During his employment, the employer's records indicate on January 23, 2004 the claimant notified the employer 15 minutes after his shift started that he would be late for work. The claimant showed up 90 minutes late for work and was not in his uniform. The employer's records also indicate the claimant did not call or report to work on January 30. On January 31, the employer's records show that when the claimant did not report to work as scheduled, the employer called him. The employer concluded the claimant was still sleeping when the employer called. The claimant reported to work two hours late on January 31, 2004. The employer's records indicate the claimant received a written warning for each of these incidents. The claimant only remembers signing one written warning.

On February 1, 2004, the claimant notified the employer the tires on his car had been slashed and he did not know when he would be able to get to work on Monday, February 2. The employer told the claimant to call Monday morning. On February 2, the claimant called about ten minutes before his scheduled shift. The claimant again told the employer, John, he would be late because he had to get his tires repaired or replaced. The employer, John, asked the claimant to call when he could get to work. When the claimant called again around 1:00 p.m., he learned the employer had someone else come in to work as a delivery driver so the claimant was not needed.

The claimant was off work a couple of days. When he returned on February 5, 2004, the employer had not scheduled him to work. The claimant tried to talk to Parker to ask why he was not scheduled to work. The employer discharged the claimant on February 5, 2004, for his inability to work as scheduled.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct,

unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony is credible and must be given more weight than the employer's reliance on reports from other employees and warnings that were not sent to the Appeals Section or the claimant to support the employer's assertions. The employer asserted the claimant received three written warnings and signed all of them. The claimant, however, testified he only received one written warning for which he signed.

Since the claimant admitted he received one written warning, he knew or should have known his job was in jeopardy. As a result of this knowledge, the claimant notified the employer on Sunday, February 1, that his tires had been slashed and he would be late for work the next day. The claimant used poor judgment by waiting just ten minutes before his shift on February 2 to verify that he would be late for work because his tires had not been repaired or replaced yet. The facts suggest the employer became increasingly frustrated with the claimant because he was not reporting to work as scheduled. The employer expected him to report to work by 11:45 a.m., but the claimant did not call back until after 1 p.m., or when his tires had been repaired or replaced. Since the claimant had to have his car working to make deliveries, his failure to report to work as scheduled on February 2, 2004 was beyond the claimant's control.

The evidence shows the claimant notified the employer when he was unable to work and he did not intentionally fail to work as scheduled on February 2, 2004. The claimant did not commit work-connected misconduct. As of February 1, 2004, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's March 1, 2004 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of February 1, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b