

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRAINE W GRAFF
Claimant

APPEAL NO: 06A-UI-08750-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

**OC: 07/30/06 R: 02
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Pizza Hut, filed an appeal from a decision dated August 23, 2006, reference 01. The decision allowed benefits to the claimant, Lorraine Graff. After due notice was issued a hearing was held by telephone conference call on September 28, 2006. The claimant participated on her own behalf and with a witness Michael Graff. The employer participated by General Manager Christina Gerard.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Lorraine Graff was employed by Pizza Hut from October 28, 1981 until July 7, 2006. She was a part-time waitress working 15 to 20 hours per week, although the hours could vary depending on the business volume.

On July 6, 2006, General Manager Christina Gerard gave the claimant a verbal reprimand for taking tips which were not hers. Usually such an offense mandates a discharge but the manager opted for only a verbal reprimand. The next day the claimant came in to work and said she “could not work [there] anymore” and left, although she was on the schedule.

Lorraine Graff has received unemployment benefits since filing a claim with an effective date of July 30, 2006.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (28) The claimant left after being reprimanded.

The claimant contends she was discharged by the general manager. There is nothing in the record to support this contention. She was reprimanded for allegedly taking someone else's tip but this was only a verbal warning. Ms. Graff was not discharged but quit because she felt she had been reprimanded unfairly. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 23, 2006, reference 01, is reversed. Lorraine Graff is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$798.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs