

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZAKAREY R GWINN**  
Claimant

**APPEAL NO. 16A-UI-05009-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC**  
Employer

**OC: 04/03/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

NPC International (employer) appealed a representative's April 22, 2016, decision (reference 01) that concluded Zakarey Gwinn (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 13, 2016. The claimant participated personally. The employer participated by Laura Love, Human Resources Leader, and Lori Ceselski, Lead Unemployment Insurance Consultant. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 22, 2012, and later worked as a full-time shift leader at the Waukee Pizza Hut. The claimant received a copy of the employer's handbook. The employer did not issue the claimant any warnings during his employment.

On April 1, 2016, the claimant complained to the employer about employees putting an unknown substance in his beverage. He told her that he had a medical issues lasting for days as a result. He reported the work injury and was concerned about working in a safe work environment. The employer told the claimant to be part of the solution and not raise his voice at work.

On April 7, 2016, the employer met with the claimant and told him employees said he was swearing and throwing things at work. The employer did not indicate who made the allegations. The claimant denied the assertions. The employer told the claimant he was being demoted and moved to a different location due to his actions. The claimant could pick one of two locations and one of two job titles. The jobs paid \$2.00 per hour less than his current position and one

may have included tips. The claimant asked for time to think about the offer. The claimant returned and declined the offer of a new job. He offered to stay in his current position. Continued work was not available for claimant as a shift leader at the Waukee Pizza Hut.

The claimant filed for unemployment insurance benefits with an effective date of April 3, 2016. The employer participated at the fact-finding interview on April 20, 2016, by Brandee Rahjes. Brandee Rahjes did not have firsthand knowledge of the events leading to the separation.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness and provided a recording of the meeting on April 1, 2016. The employer did not provide any eyewitnesses or written statements to support its case.

**DECISION:**

The representative's April 22, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs