

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY R COPPER
Claimant

APPEAL NO. 17A-UI-02212-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

OC: 01/29/17
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 February 16, 2017, decision (reference 01) that concluded Brittany Copper (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 March 22, 2017. The claimant participated personally. The employer participated by Deborah Hoksbergen, Restaurant General Manager; Crystal Gentry, Shift Leader; and Joan Vance, Unemployment Hearing 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 July 10, 2014, as a full-time server. The employer has a handbook, but it was not given to the claimant. The employer did not issue the claimant any warnings during her employment. In June 2016, Ms. Hoksbergen was assigned to the restaurant and she reduced the claimant's hours to part-time.

On February 1, 2017, a new employee began working at the claimant's location. There was no staff vacancy on that day. The claimant pushed her cart to the buffet and started to put tomatoes out when she noticed they were moldy. She mentioned this to Ms. Hoksbergen. Ms. Hoksbergen said she cut the tomatoes the night before, they could not be moldy, and the claimant should put them on the buffet. The claimant went back to the refrigerator to find another crock. The next crock was also moldy. The claimant showed the tomatoes to Ms Hoksbergen and said she could not put them on the buffet because they would make customers sick. Ms. Hoksbergen grabbed the tomatoes from the claimant and told her to get "the fuck" out. The claimant left. On February 2, 2017, the employer terminated the claimant for arguing with her supervisor and not following instructions.

The claimant filed for unemployment insurance benefits with an effective date of January 29, 2017. The employer participated personally at the fact-finding interview on February 15, 2017, by Bonita Pevey. She 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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 16, 2017, 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/rvs