

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH R NEFF
Claimant

APPEAL NO: 13A-UI-07528-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

OC: 05/12/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 13, 2013 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Crystal Cox, a shift leader, and Hillary Wofford, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in August 2012. She worked 25 to 35 hours as a server.

The claimant worked until closing on May 12. She left work around 1 a.m. The claimant forgot her apron and tips at work. The next day, the claimant called and talked to Cox. Cox told the claimant that her apron was at work. When Cox talked to the claimant, she did not notice anything unusual about the claimant.

The claimant reported to work around 4:15 p.m. on May 13. She was scheduled to work at 4:30 p.m. Before the claimant came to work, Cox told Wofford she found an open bottle of vodka in the claimant's apron.

When the claimant reported to work, Wofford was upset. Wofford made the comment that she was the only person who did anything at work. The claimant and Wofford had a verbal altercation by the dish rack.

On May 13, Wofford saw the claimant run into counters at work. But this was not unusual for the claimant to do. Wofford concluded the claimant reported to work under the influence. Wofford assumed the claimant partied the night before. The claimant did not party or have any alcohol beverages between 1 a.m. and 4:15 p.m. on May 13. She did not buy a bottle of vodka and does not know how it got in her apron.

Even though Wofford concluded the claimant reported to work under the influence, she did not ask her to take a drug test. The employer's policy informs employees they can be asked to take a drug test. Instead, Wofford told the claimant on May 13 around 5 p.m. that she was done and told her to leave work. On May 13, the employer did not tell the claimant why she was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

This case revolves around a credibility issue. The employer asserted the claimant reported to work under the influence and the claimant denied she had anything to drink after she closed at 1 a.m. or before she reported to work at 4:15 p.m. that same day. The employer's drug and alcohol policy informs employees the employer may require them to submit to a drug test. The employer did not ask the claimant to submit to a test and the claimant denied she had anything to drink before she came to work on May 13. The claimant's testimony that she did not have anything to drink was supported by the conversation she had with Cox when she called to find out if her apron was at work. Based on these factors, the claimant's testimony is deemed more credible than the employer's. The facts do not support the employer's assertion that the claimant reported to work on May 13 under the influence.

The employer may have had justifiable business reasons for discharging the claimant. But, the evidence does not establish that the claimant commit work-connected misconduct. As of May 12, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's June 13, 2013 determination (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 12, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs