

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWNITA C AMERISON**  
Claimant

**APPEAL NO. 16A-UI-08970-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC**  
Employer

**OC: 07/17/16**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

NPC International (employer) appealed a representative's August 8, 2016, decision (reference 02) that concluded Shawnita Amerison (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 September 6, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Marqueta McGee, Restaurant General manager, and Brandee Rahjes, 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 March 4, 2010, as a part-time day server. The employer has a handbook which includes an Anti-Harassment policy. It also prohibits interference with or disturbing working employees while off-duty. The claimant frequently left rude voice messages or texts for the restaurant general manager (RGM). The RGM verbally warned the claimant about inappropriate behavior and failure to follow instructions.

On April 16, 2016, the claimant telephoned the RGM at 2:00 a.m. She left a voice mail, calling her a "fucking cunt". She threatened to report her to the RGM's boss. On April 17, 2016, the claimant sent a text to the RGM that said "You're done". The claimant played the April 16, 2016, voice mail for her supervisor's supervisor. On April 22, 2016, the RGM terminated the claimant for threatening the RGM and violations of the employer's policies.

The claimant filed for unemployment insurance benefits with an effective date of July 17, 2016. She has received no unemployment insurance benefits after her separation from employment. The fact finder called the employer's representative but it did not have firsthand information.

The employer's representative provided documents for the fact-finding interview. The employer did not identify the dates and particular circumstances that caused the separation. An employee with firsthand information could not be contacted for rebuttal.

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

For the reasons that follow the administrative law judge concludes the claimant was 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). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**DECISION:**

The representative's August 8, 2016, decision (reference 02) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs