

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA D CAMPBELL
Claimant

APPEAL NO. 13A-UI-03727-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

**OC: 02/10/13
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 19, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 1, 2013. Claimant Amanda Campbell participated. Dustin Kleppe, General Manager, represented the employer.

ISSUE:

Whether Ms. Campbell was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Amanda Campbell was employed by NPC International, Inc., doing business as Pizza Hut, as a full-time Shift Manager from 2007 until February 10, 2013, when Kelly Kramer, Area Manager, discharged her from the employment for violation of the employer's cash handling policies. Ms. Campbell worked at a restaurant in Waterloo. Ms. Campbell's immediate supervisor was Jennifer Phelps, General Manager. Ms. Phelps had hired Ms. Campbell and was Ms. Campbell's supervisor until Ms. Phelps' last day with the employer, February 5, 2013. Ms. Kramer was immediately above Ms. Phelps in the chain of command. Ms. Campbell's usual work hours were 9:00 a.m. to 5:00 p.m., Saturday through Wednesday.

As Shift Manager, Ms. Campbell would generally be the only manager on duty during the day shift. Ms. Campbell was responsible for all aspects of restaurant operations during her shift. Those duties included preparing and making the daily bank deposit. To prepare the deposit, Ms. Campbell would have to remove any cash and checks over and above the petty cash amounts that needed to remain in the register drawers. Ms. Campbell would have to count the cash and checks and compare it to what the employer's computer system indicated should be the amount of the deposit. Ms. Campbell would then need to document in the computer system that the amounts did in fact match. Ms. Campbell would have to prepare a deposit slip. Ms. Campbell would then have to document on a separate log the amount of the deposit and the number of the bank bag in which she placed the deposit. Ms. Campbell was then expected

to take the deposit to the bank, preferably during that same shift. If she could not take it to the bank during that shift, Ms. Campbell was expected to secure the deposit in the safe so that the deposit could be taken to the bank the next day. Ms. Campbell had not been advised that she was required to take the deposit to the bank within 30 minutes of preparing the deposit.

On February 4, Ms. Campbell prepared the deposit for the day shift. Ms. Campbell did not record on the separate log the amount of the deposit or the number of the bank bag in which she placed the deposit. Ms. Campbell may have placed the deposit in the safe. Ms. Campbell did not take the deposit to the bank. The deposit amount was \$447.65.

Ms. Campbell was scheduled to work the next day, February 5. After Ms. Campbell took care of some other store opening duties that morning, Ms. Campbell accessed the safe and observed that the deposit she had prepared was not in the safe. However, she observed that the deposit prepared by the evening Shift Manager, Jessica Grapp, was in the safe. After that, Ms. Campbell had contact with the bank, which confirmed no deposit had been received. Ms. Campbell also had contact with Ms. Phelps and Ms. Kramer about the missing deposit. Ms. Campbell then worked to the end of her shift and went home when the evening manager arrived. Ms. Campbell worked the next day, February 6. During that shift, Ms. Kramer and another person Ms. Campbell did not know came to the restaurant and asked Ms. Campbell whether she knew who might have taken the deposit. Ms. Campbell indicated she did not know. Ms. Campbell worked to the end of her shift and then started a period of vacation.

Ms. Campbell was next scheduled to work on February 11. On February 10, an employee, Monica Crawford, telephoned Ms. Campbell to indicate Ms. Crawford had learned Ms. Campbell had been discharged. Ms. Campbell then sent a text message to Ms. Kramer asking what was going on and that she had just been told by a subordinate that she had been fired. Ms. Kramer responded by text message and indicated that she had wanted to speak to Ms. Campbell in person, but that the employer had to let her go.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment. The evidence does indicate that Ms. Campbell was careless or negligent in connection with preparing the February 4 deposit insofar as she did not complete the log sheet. That isolated incident of carelessness or negligence is not enough to establish willful disregard of the employer's interests. The employer had the ability to present testimony through Ms. Kramer, Ms. Grapp, Ms. Phelps or anyone else who might have had personal knowledge of the incident that triggered the discharge. While the administrative law judge finds reason to question Ms. Campbell's credibility, the bottom line is that the employer simply did not present enough evidence to prove willful misconduct by a preponderance of the evidence. Rather than presenting the appropriate evidence, the employer elected to have the new General Manager, Mr. Kleppe, who started at the store on February 6, provide hearsay testimony as the employer's sole evidence in the matter.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Campbell was discharged for no disqualifying reason. Accordingly, Ms. Campbell is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's March 19, 2013, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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