

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JESSICA J POTTS**

Claimant

**APPEAL NO. 18A-UI-07026-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC**

Employer

**OC: 05/20/18**

**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 June 19, 2018, decision (reference 01) that concluded Jessica Potts (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 July 18, 2018. The claimant participated personally. The employer participated by Krystina Lorah, Area General Manager; Laura Love, People Leader; and Rosa Lucero, 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 June 22, 2005, and at the end of her employment she was working as a full-time restaurant general manager. She electronically signed for receipt of the employer's handbook when she was hired.

Food safety procedures required that all dough be discarded at the end of the day. Other rules required that expiration dates be checked and food discarded by 11:00 a.m. on each day. The claimant was trained annually regarding these and other processes.

The claimant was supposed to keep a daily food safety book. She understood she might lose a point in a safety inspection if it were not up to date. The claimant was the only person who worked from 9:00 a.m. 5:00 p.m. each day. She struggled to set the restaurant up and go to the bank before opening. Previously, she did not complete the book for a time and the employer did not issue her a warning. The employer knew the book was not complete. More recently, the area general manager told the claimant not to worry.

On May 18, 2018, the claimant signed an Action Plan that would go into effect on May 23, 2018. It addressed speed of service and food costs. On May 19, 2018, the area general manager again told the claimant not to worry. If she needed help, the area general manager would handle it.

On May 21, 2018, the claimant worked until approximately 7:30 p.m. The restaurant was still open when the claimant left. Later, on May 22, 2018, the claimant and the manager were called in to meet with the employer. The employer terminated the claimant and the manager for not discarding dough at the end of the evening on May 21, 2018, and discarding items before 11:00 a.m. on May 22, 2018. The manager worked those shifts and was in charge of discarding product. The claimant was also terminated for not making any entries in the daily food safety book since April 15, 2018.

The claimant filed for unemployment insurance benefits with an effective date of May 20, 2018. The employer provided the name and number of Bonita Pevey as the person who would participate in the fact-finding interview on June 18, 2018. The fact finder called Ms. Pevey, a representative with Talx but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did respond to the message later and gave information to a person named "Bree". That information was not recorded in the fact finding notes.

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

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of lack of time to complete all the tasks the employer assigned. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's June 19, 2018, 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.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs