

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN N JACOBS
Claimant

APPEAL NO: 09A-UI-00976-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

OC: 12/07/08 R: 02
Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

NPC International, Inc. / Pizza Hut (employer) appealed a representative's January 14, 2009 decision (reference 01) that concluded Bryan N. Jacobs (claimant) was qualified to receive unemployment insurance benefits after a separation from employment fro. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2009. The claimant participated in the hearing. Clint Copic appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about November 7, 2007. He worked full time as a cook and utility worker at the employer's Des Moines, Iowa restaurant. His last day of work was December 8, 2008. The employer discharged him on December 11, 2008. The stated reason for the discharge was a repeat occurrence of being a no-call/no-show for work after reporting he would be a bit late but would be to work.

The claimant was scheduled to work at 10:00 a.m. on December 9, 2008. At approximately 8:00 a.m. he called to say he would be about an hour late as he was running some errands. However, he did not report for work and did not call again that day. On December 10 the claimant was again scheduled for work and called in the morning to report he would be absent, indicating that he had gone to Kansas City on a family matter. On December 11 the claimant was again scheduled for work; the employer called him at approximately 9:00 a.m., leaving a message attempting to tell the claimant not to report for work if he had returned to Des Moines. However, the claimant had already left for work, so he was informed of his termination upon reaching the restaurant.

Virtually the same scenario had occurred over a several day period in late October or early November; Mr. Copic, the general manager, had advised the claimant at that time that this was unacceptable and could not reoccur.

The claimant established a claim for unemployment insurance benefits effective December 7, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$895.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's second occurrence of being a no-call/no-show after reporting he would be in for work in order to leave town to deal with a family matter not shown to be of such necessity as to excuse his conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's January 14, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 8, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css