

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES A SHORES**  
Claimant

**APPEAL NO. 15A-UI-00006-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC**  
Employer

**OC: 06/01/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Charles Shores (claimant) appealed a representative's December 30, 2014 (reference 03) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with NPC International (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 26, 2015. The claimant participated personally. The employer participated by Laura Love, Human Resource Leader; Sherry Morales, Area Manager; and Myndee Horton, Restaurant General Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One 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 July 19, 2014 as a part-time cook. The claimant signed for receipt of the employer's handbook. On September 9, 2014 the claimant's counselor provided the employer with documentation of the claimant's mental health conditions. The claimant was diagnosed with anxiety, post-traumatic stress disorder, and Asperger's disorder. The employer looked on the internet for information about the conditions. The employer would, at times, accommodate the claimant by allowing him a break when he was under stress and had an anxiety attack.

The employer issued the claimant a verbal warning on December 7, 2014 for failure to follow instructions. The claimant was having an anxiety attack. He asked for a break but the employer would not accommodate his request and asked him to continue to perform work while having a medical episode.

The employer knew the claimant's medical conditions caused him to raise his voice and not be calm. These behaviors were frustrating to the employer. It decided to reduce his hours. On December 11, 2014 the claimant decided to speak to the employer under the employer's Open Door Policy section of the handbook. After fifteen or twenty minutes, the employer thought the claimant was yelling and rambling. The employer felt the claimant "on a daily basis threw his disorders in our face". The employer terminated the claimant.

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

For the reasons that follow the administrative law judge concludes the claimant was not 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's December 30, 2014 (reference 03) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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