

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BEN HARRISON**  
Claimant

**APPEAL NO: 07A-UI-04037-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC**  
Employer

**OC: 03-18-07 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 12, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 23, 2007. The claimant participated in the hearing. Robert Crandall, General Manager; Kathryn Ehlig, Acting Area General Manager; and John Smith, Assistant General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as part-time driver/shift manager for Pizza Hut from May 3, 2005 to March 16, 2007. On March 14, 2007, the claimant was scheduled to work at 4:00 p.m. and was a no-call no-show. He called General Manager Robert Crandall while he was in a meeting in Idaho to ask about having his car towed because Mr. Crandall's family is in the towing business. The claimant testified he called the restaurant but could not get through and when he did not show up by 4:15 p.m. Assistant Manager John Smith called him and the claimant said he was having car trouble and would not be in that day. On March 15, 2007, Acting Area General Manager Kathryn Ehlig was waiting for the claimant to give him a final written warning. The claimant was late and when he arrived Ms. Ehlig met with him and issued the final written warning and they discussed various issues. The claimant was upset after the meeting and when Assistant Manager John Smith tried to talk to the claimant about work related issues and ask him some questions about whether he was driving that night the claimant walked away from him two or three times and then said, "I'm not talking to you." He also slammed a dish tray down. The claimant was working with a borrowed vehicle and told the employer he had to have it back by 12:00 a.m. so he left at 11:00 p.m. and did not return as expected to finish the required clean-up. The shift manager reported to Mr. Smith that he received complaints from customers about the claimant slamming dishes around and from a delivery customer that the

claimant was rude. The claimant denies slamming trays around or that he made any deliveries at all that night. On November 5, 2005, the claimant was late for work. On November 20, 2005, the claimant was one hour late after the employer called him. On February 24, 2006, he left before closing. On March 19, 2006, the claimant called 30 minutes prior to his shift and stated his child lost his keys and he would not be in until later. The manager told him he needed to be there by 8:00 p.m. and reachable by phone and the claimant stated he would be available and call the employer once he knew when he would be in but he was not there when the employer called and did not call the employer. On May 28, 2006, the claimant was a no-call no-show and sent the employer a text message at 10:26 p.m. and said he was in Chicago and asked for the day off and said he had switched with another employee but that employee was already working. The employer prepared written warnings for those incidents but it is not clear the claimant was made aware of those warnings. After reviewing the situation on March 15, 2007, the employer terminated the claimant's employment for being abusive toward customers and management.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies nearly all of the allegations made by the employer, the employer's account of the events March 14 and March 15, 2007, was credible. Although the claimant testified he tried to call to report his absence March 14, 2007, he called the General Manager in Idaho about towing and then stated he tried to call the restaurant but could not get through. It seems unlikely that if he would have continued to try to reach the employer he would not have been able to contact Mr. Smith at some point, especially in light of the fact the employer relies on phone calls for much of its business. The claimant testified he must not have heard Mr. Smith talking to him and asking him questions but Mr. Smith credibly testified he asked the claimant if he was going to drive several times but the claimant continually walked away from him and then said he was not talking to Mr. Smith. The claimant received a final written warning and even if he did not receive the warnings about his past occurrences the final written warning would or should have made him aware his job was in jeopardy. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The April 12, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$149.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs