

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOYD L WILLIAMS

Claimant

APPEAL NO. 09A-UI-03180-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC

PIZZA HUT

Employer

**Original Claim: 07/27/08
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 18, 2009, reference 05, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was conducted on March 24, 2009. The claimant participated personally. The employer participated by Mr. Jamie Logan, area general manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant was employed for approximately three to four months as a cook. The claimant was discharged after he failed to report or provide proper notification of his impending absence on December 14, 2008. Mr. Williams had previously been warned on October 27, 2008, for failing to report for scheduled work and for failing to provide notification. Company schedules are posted two weeks in advance and the claimant was aware that he was scheduled to work. The claimant was also aware of the company policy that requires employees to provide two hours' notification to management if they are unable to report for work. Employees that trade or find a replacement for their work shift are required to inform management of the replacement. Although aware of these work rules, Mr. Williams did not follow them. Because he had been specifically warned in the past that if he failed to report or provide notification in the future he would be discharged, a decision was made to terminate Mr. Williams from his employment.

It is the claimant's position that he believed that he had secured a replacement based upon a text message that had been sent to him by another worker. Mr. Williams agrees that he did not provide notice to the employer as required.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Williams was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes that Mr. Williams was aware of the company policy that required him to provide direct notification to management of impending absences and/or direct notification that a replacement for a work shift had been secured. Mr. Williams had been specifically warned in the past for failing to report and failing to provide proper notification and was aware that his employment was in jeopardy if he did not follow the rule in the future. On December 14, 2008, the claimant was scheduled to work but did not successfully secure a replacement for his work shift. The claimant provided no notification to management that he had attempted to find a replacement or that he would not be reporting for his scheduled shift. Based upon the previous warning that had been served upon the claimant, a decision was made to terminate Mr. Williams from his employment.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's conduct was in willful disregard of the employer's interests and standards of behavior. The claimant knew of the notification requirement but did not follow it.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated February 18, 2009, reference 05, is reversed. Loyd Williams is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw