

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

STEPHEN L LANDRY
Claimant

APPEAL NO. 17A-UI-13318-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

**OC: 11/19/17
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stephen Landry (claimant) appealed a representative's December 15, 2017, decision (reference 01) 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 18, 2018. The claimant participated personally. The employer participated by Bob Crandall, Area Supervisor. 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 March 30, 2017, as a part-time shift manager. The claimant signed for receipt of the employer's on-line handbook when he was hired. The handbook prohibits employees from being intoxicated at work. The claimant had been diagnosed with post-traumatic stress disorder in 2003. He was taking medication for other issues. The employer was unaware of the claimant's health matters.

On July 3, 2017, the claimant left his work premises unattended and unlocked. He drove approximately one-quarter mile from the work site, purchased alcohol, and drank it. The claimant knew it violated the employer's work rules to drink alcohol while working. The claimant does not remember anything after he left to purchase items at the store. On his return trip, he was stopped by law enforcement and arrested for operating a vehicle while intoxicated. The claimant was incarcerated. On July 4, 2017, the claimant sent a text to the employer apologizing for the situation. The employer terminated the claimant for drinking alcohol during work time. Later the claimant pled guilty to operating a vehicle while intoxicated, failure to stop, and failure to control his vehicle.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. He drank during work time and left the store unattended. The claimant asserts that his actions were unintentional but has not provided a doctor's note indicating his actions were caused by his medical condition. He pled guilty to a crime that was committed during this period of time, asserting that he was responsible for his actions and accepted guilt. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct. Benefits are denied.

DECISION:

The representative's December 15, 2017, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs