

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS J LEON
Claimant

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

APPEAL NO: 13A-UI-06821-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/12/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 31, 2013, reference 01, that held claimant was not discharged for misconduct on May 7, 2013, and benefits are allowed. A telephone hearing was held on July 19, 2013. The claimant participated. Vernes Hedzic, General Manager, and Crystal Dean, Shift Manager, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on December 16, 2009, and last worked for the employer as a full-time cook on May 7, 2013. Although claimant had been considered full time, his work hours had recently been reduced.

Claimant reported for work on May 7 and he was scheduled for 2 ½ hours. Since work was slow, he asked permission from the head cook to leave, and it was approved. When claimant next reported for work, he was told by the GM he was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on May 7, 2013.

The employer has a representative who is knowledgeable about the evidence to be offered to establish job misconduct. The employer protested the employment separation as a voluntary quit. The employer failed to offer any written disciplinary document though the GM claims he did so. Claimant denies he had been disciplined. The lack of employer evidence on discipline and the inconsistency on the reason for employment separation are sufficient to support a conclusion that job disqualifying misconduct is not established in this matter.

DECISION:

The department decision dated May 31, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on May 7, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs