

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MARY J GANSEMER  
198 – 1<sup>ST</sup> ST #102  
CORALVILLE IA 52241-2660**

**NPC INTERNATIONAL INC  
PIZZA HUT  
c/o JON-JAY ASSOCIATES INC  
PO BOX 182523  
COLUMBUS OH 43218-2523**

**Appeal Number: 06A-UI-02207-CT  
OC: 01/29/06 R: 03  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Pizza Hut filed an appeal from a representative's decision dated February 13, 2006, reference 01, which held that no disqualification would be imposed regarding Mary Gansemer's separation from employment. After due notice was issued, a hearing was held by telephone on March 14, 2006. The employer participated by Paula Brockert, General Manager. Ms. Gansemer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gansemer was employed by Pizza Hut from

April 1, 2004 until January 23, 2006. She worked from 25 to 35 hours each week as a cook and customer service representative. She was discharged because she did not always get along with coworkers. She did not always notify coworkers if there were items missing from orders. She would sometimes walk away when the telephone was ringing, forcing others to answer. She would string order tickets between tables to prevent others from walking between them. The area between the tables was not an established walkway. The employer felt Ms. Gansemer sometimes nagged coworkers. She was never warned either verbally or in writing that that she was in danger of losing her employment for any reason.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Gansemer was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Gansemer was discharged because she did not get along with her coworkers. However, the employer never warned her that she was engaging in conduct that might lead to her discharge. Therefore, she did not have a fair and reasonable opportunity to make those changes necessary to retain her employment.

The evidence establishes that Ms. Gansemer was an unsatisfactory employee. However, the evidence does not establish that she willfully and wantonly engaged in conduct she knew to be contrary to the employer's interests or standards. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

#### DECISION:

The representative's decision dated February 13, 2006, reference 01, is hereby affirmed. Ms. Gansemer was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc