

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE C HENKE
Claimant

APPEAL NO. 06A-UI-11773-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
DBA PIZZA HUT**
Employer

**OC: 11-05-06 R: 04
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

NPC International, Inc., filed a timely appeal from an unemployment insurance decision dated November 30, 2006, reference 01, which allowed benefits to Shane C. Henke, formerly known as Shane C. Thacker. After due notice was issued, a telephone hearing was held December 21, 2006, with Ms. Henke participating. Restaurant General Manager Troy Lamphier participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shane C. Henke was employed as a cook at a Pizza Hut owned and operated by NPC International, Inc. at the time of her discharge on October 26, 2006. Ms. Henke did not report to work or contact the employer on October 26, 2006. She had received a warning in July 2006 for being absent without contact and a final warning in September 2006 for being absent because she did not have day care available for her child. General Manager Troy Lamphier had taken Ms. Henke off the schedule for October 24, 2006, but she was scheduled for October 26, 2006. Ms. Henke believed, incorrectly, that she was not scheduled.

Ms. Henke has received unemployment insurance benefits since filing a claim effective November 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant was discharged for misconduct in connection with her work. It does.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters of personal responsibility such as child care are considered unexcused whether or not the employee notifies the employer. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984).

The evidence in the record establishes three unexcused absences in just over three months' time. Ms. Henke testified that she was not scheduled to work on October 26, 2006. Mr. Lamphier, the general manager and the person who prepared the schedule, contradicted Ms. Henke's testimony, noting that he was looking at the original of the schedule for the week in question as he testified. The administrative law judge finds the employer's testimony the more credible. Benefits must be withheld.

Ms. Henke has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

Ms. Henke testified that she saw her doctor on October 26, 2006 and that her doctor had excused her from work until she saw a specialist on November 16, 2006. Nevertheless, Ms. Henke filed a claim for unemployment insurance benefits effective November 5, 2006. The matter of whether the claimant meets the eligibility requirement of being medically able to work is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated November 30, 2006, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$492.00. The question of whether she is medically able to work is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs