

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD C SEIBERLING**  
Claimant

**APPEAL NO. 10A-UI-16524-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NPC INTERNATIONAL INC  
PIZZA HUT**  
Employer

**OC: 10-31-10  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 23, 2010, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on January 19, 2011. The claimant did participate. The employer did participate through Matt Newcomb, Area Manager.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cook, part-time, beginning December 1, 2009 through October 18, 2010, when he was discharged. The claimant called work on October 16, 2010 and spoke to the manager Kathy telling her that his grandfather was ill and he needed some time off work. Kathy told him to take as much time as he needed and to let the employer know when he was ready to return. Kathy evidently did not tell the other managers that she had given the claimant time off work, because the employer considered him a no-call, no-show for work on his scheduled shifts of October 17 and 18. The claimant had been warned about his attendance prior to this time, so he was discharged for excessive unexcused absenteeism. The claimant's grandfather died on October 20. When the claimant returned to work on October 21 he was told he was discharged for missing work on October 17 and 18.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Since claimant did not have three consecutive no-call, no-show absences as required by rule in order to consider the separation job abandonment, the separation was a discharge and not a quit.

Iowa Code § 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The administrative law judge is persuaded that the claimant had permission from the manager Kathy to miss work on October 17 and 18. He called in again and took off October 19 and 20 when his grandfather died. Since he was given permission to miss work and since he properly reported the absences, the employer has not met their burden of proof to establish that the claimant was discharged for excessive unexcused absenteeism. Benefits are allowed.

**DECISION:**

The November 23, 2010 (reference 03) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw