

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASONDRA JORGENSEN

Claimant

APPEAL NO: 08A-UI-10495-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC/PIZZA HUT

Employer

**OC: 10/05/08 R: 03
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

NPC International, Inc. (employer), doing business as Pizza Hut, appealed an unemployment insurance decision dated October 30, 2008, reference 01, which held that Casondra Jorgensen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2008. The claimant participated in the hearing. The employer participated through Brett Cahill, General Manager and Kaye Surls, Area General Manager. Employer's Exhibits One through Seven and Claimant's Exhibits A through E were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

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 as a full-time delivery driver on October 26, 2007 and became a shift leader on June 25, 2008. She was discharged for insubordination and disruptive behavior on September 23, 2008. It appears the claimant was unable to successfully perform the role as a shift leader. She complained repeatedly to Area General Manager Kay Surls during August 2008 about an employee named Veronica. The claimant supervised Veronica and wanted her fired. Ms. Surls advised the claimant she could not fire an employee but could only issue disciplinary warnings. The claimant issued Veronica a written warning for being late on August 8, 2008. However, she continued to call Ms. Surls to complain about Veronica. Ms. Surls met with both the claimant and Veronica to discuss their inability to work together. Veronica reported that the claimant was targeting her and trying to fire her or get her to quit. The tension continued until it affected the performance of the store and Veronica was transferred to another store. The claimant believes Veronica was attacking her and said that she would not be abused.

The claimant introduced a letter into evidence which was written by a co-employee named Ron and addressed to General Manager Brett Cahill. She contends the letter shows the type of abuse and discrimination she had to face. Ron states in the letter that he no longer wants to complete assistant manager training, "unless something is done about Ms. Bitch's power trip." He further states that he used to like his job but was starting to hate it and felt like the claimant wanted him gone, "just like Veronica." Ron told Mr. Cahill that he was tired of the area manager "having Cassie's back on everything with utter disregard to anyone else."

On September 19, 2008 the claimant and an employee named Paul began to argue. Mr. Cahill told them both to stop it immediately and the claimant snapped at him. Mr. Cahill later talked to Paul who was cooperative and apologized. When he tried to speak with the claimant outside the store, he was told to leave her alone. The claimant then screamed at Mr. Cahill that he should fire Paul and that she was thinking of walking. Mr. Cahill said he did not like to be threatened and told her if she, "did not want to work there then don't." The claimant then walked inside the store and the door slammed in Mr. Cahill's face. Mr. Cahill was completely frustrated and contacted Ms. Surls for assistance. Ms. Surls went to the store and a meeting was held, which should have been the end of the problems.

The next morning the claimant left Mr. Cahill a three-page, handwritten letter. She started out by stating that she was not mad but was hurt and felt like she and the rest of the team got slapped in the face. She was also hurt and disappointed that Mr. Cahill chose Ron instead of her to be an asset manager. The claimant stated she wants to step down from being a shift manager as of November 4, 2008 but added that he would not understand and would probably, "use the schedule to get even with me for stepping down." She signed the letter by stating, "I still care, I'm not mad just heartbroken, Cassie."

The claimant called the store on September 21, 2008 asking questions about the human resources people as she was going to call Kathy and report a "bunch of wrong things." She went on to tell Mr. Cahill that she was going to make the shit hit the fan and make his life a living hell. The claimant then proceeded to tell Mr. Cahill that he was a coward. An employee called Mr. Cahill on September 22, 2008 to state that she was asked to sabotage the crew that night by not completing the full "R4R". Cassie had spent all day crying to this employee about how she was not appreciated and the employee wanted no part of it. Another five page letter was left for Mr. Cahill on September 22, 2008. She begins this letter by apologizing for, "speaking to you the way I did last night." She took offense to Mr. Cahill telling her that the only reason she is doing "this" is because she cannot have her own way. She further complained about Paul and talked about Ron and Veronica. The claimant said she was afraid of what Paul was going to do or say.

She said she would not go to human resources because she would do what he wanted as usual. The claimant added, "So, I'll stay intimidated (sic), abused, and threatened to please you." However, she then informs the general manager of what hours and days she would work in the following week. She ended this letter by stating that she had made copies of it, "just in case you try to cut my hours and play with my schedule and punish me for standing up for myself when no one else will. Thanks Cassie."

On September 23, 2008 the claimant called Mr. Cahill repeatedly from 4:30 a.m. to 6:30 a.m. when he finally called her back. The claimant was at the store and was upset that Mr. Cahill had changed his email password. General Managers are asked to regularly change their passwords to monitor unauthorized crew access. Mr. Cahill had changed the password the day before and had not seen the claimant since then so did not have a chance to give it to her. The claimant told Mr. Cahill she was going to file a discrimination and harassment lawsuit against

him and the employer. Mr. Cahill reported the calls to Ms. Surls, who also heard from the claimant that morning when she requested a meeting with Ms. Surls' supervisor.

Mr. Cahill called the store that morning and spoke with Ron who said the claimant, "came in freaking out and raising hell this morning." She left to pick up the morning cook and returned saying she would not be working that day. Later that evening, Mr. Cahill contacted the local police to make them aware of the claimant's harassing conduct.

An employee named Stacy came to work on September 24, 2008 and reported that the claimant called her and said that she loved Mr. Cahill like a son or maybe she just loved him. Stacy and another employee named Mike both said that the claimant was in love with Mr. Cahill but she was going to tell the police that Mr. Cahill was selling drugs. Supervisor Tammy Knebel had scheduled an area visit with Ms. Surls on September 24, 2008 and the situation with the claimant was discussed. The claimant requested to meet with Ms. Knebel, Ms. Surls and Mr. Cahill. It was concluded that the claimant had been creating an intimidating, hostile and offensive work environment. And even though there should have been no continued problems after her argument with Paul, the claimant continued to harass Mr. Cahill and to disrupt the business. The claimant was discharged at the meeting.

At the hearing, the claimant testified that she purchased drugs from Mr. Cahill out of the employer's store. Her friend testified that Mr. Cahill left a message on her voice mail on September 21, 2008 stating that he just got some great pot and it was "fire".

The claimant filed a claim for unemployment insurance benefits effective October 5, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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(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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for insubordination and disruptive behavior. She denies all wrongdoing and feels that she was abused and discriminated against. However, the evidence shows that the claimant was at the center of the problems and her conduct was completely unreasonable. Absent an emergency, no employee should ever call a supervisor at 4:30 a.m., let alone calling repeatedly. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated October 30, 2008, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs