

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

CLINT A CARNAHAN
808 – 25TH ST
DES MOINES IA 50312

NPC INTERNATIONAL INC
PIZZA HUT
C/O JON-JAY ASSOC INC
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 05A-UI-03790-JTT
OC: 10/10/04 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Pizza Hut filed a timely appeal from the March 29, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on May 2, 2005. Clynt Carnahan participated in the hearing. Joni Sands, General Manager, represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Clynt Carnahan was employed by Pizza Hut as a full-time shift manager from October 15, 2004 until March 5, 2005, when Joni Sands, General Manager, discharged him for misconduct.

The final incident that prompted the discharge occurred approximately three days prior to the discharge. On that date, the manager had implemented a new method of storing pizza boxes, to save space in the restaurant. Instead of folding the pizza boxes ahead of time, the manager wanted the boxes to remain unfolded and "nested" in a stack. Mr. Carnahan voiced his opposition to the new method of storing the boxes. Mr. Carnahan opined that the new method would create the need for an additional employee on the "cut table" folding boxes during the dinner rush. Mr. Carnahan did not refuse to employ the new method. Mr. Carnahan voiced his opposition in front of other employees, but neither raised his voice nor used profanity. Mr. Carnahan and the manager apparently struck a deal whereby if the new method did not prove to be an improvement, the manager would go back to the previous method. Mr. Carnahan then had two scheduled days off. When Mr. Carnahan went to the restaurant to collect his paycheck, Ms. Sands met him outside and advised him he was being discharged.

Ms. Sands became the general manager of the Pizza Hut in November 2004, shortly after Mr. Carnahan commenced working at that store. Mr. Carnahan had previously worked at a different Pizza Hut store. Ms. Sands' decision to discharge Mr. Carnahan was based on her conclusion that Mr. Carnahan did not support her in the changes she wished to make to the store and did not treat employees appropriately. However, the most recent incident to which Ms. Sands could point regarding inappropriate treatment of an employee predated Mr. Carnahan's discharge by a month.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Carnahan was discharged for misconduct in connection with his employment.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8). Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. See 871 IAC 24.32(9).

The evidence fails to establish a "current act" of misconduct. See 871 IAC 24.32(8). Mr. Carnahan, as a shift manager, voiced his opinion about a change within the restaurant that he believed would increase the need for man-hours during the restaurant's busiest times. There is no indication that he engaged in insubordination or any other form of misconduct at the time he voiced his opinion. The evidence in the record establishes that the manager discharged Mr. Carnahan because of a personality conflict between herself and Mr. Carnahan. The administrative law judge concludes that Mr. Carnahan was not discharged for misconduct. Accordingly, no disqualification will enter.

DECISION:

The Agency representative's decision dated March 29, 2005, reference 02, is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

jt/s