

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS J SCOTT
Claimant

APPEAL NO. 11A-UI-07472-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NPC INTERNATIONAL INC
Employer

OC: 04/10/11
Claimant: Respondent (2-R)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

NPC International, Inc., doing business as Pizza Hut, filed a timely appeal from an unemployment insurance decision dated May 27, 2011, reference 01, that allowed benefits to Thomas J. Scott. After due notice was issued, a telephone hearing was held July 1, 2011, with Store Manager Karen Koch and Area Manager Jose Morales participating for the employer. Mr. Scott did not provide a telephone number at which he could be contacted. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Is the claimant eligible to receive unemployment insurance benefits?

FINDINGS OF FACT:

Thomas J. Scott has worked for NPC International, Inc., doing business as Pizza Hut, since July 20, 2005. He currently works as a cook, a part-time position. Mr. Scott formerly worked as a driver, receiving more hours. He cannot work as a driver now because of an OWI charge.

Mr. Scott has received unemployment insurance benefits since filing a claim effective April 10, 2011.

REASONING AND CONCLUSIONS OF LAW:

In order to receive unemployment insurance benefits, an individual must be unemployed, either totally or partially, through no fault of his or her own. See Iowa Code section 96.4-3. The evidence here establishes that Mr. Scott's partial unemployment has been caused by his own actions which resulted in the OWI charge. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Scott must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated May 27, 2011, reference 01, is reversed. The claimant is ineligible for unemployment insurance benefits. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw