

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN ROGERS
Claimant

APPEAL NO. 13A-UI-07470-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

OC: 05/12/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Robin Rogers (claimant) appealed an unemployment insurance decision dated June 12, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Pizza Hut (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2013. The claimant participated in the hearing. The employer participated through John Stodgel.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 employed as a full-time server from July 7, 2012 through January 11, 2013 when she was discharged for adding tips without authorization to two customer's credit card receipts. The employer placed the claimant on a final written warning for attendance on January 2, 2013 and she signed the warning but denies knowing it was a final warning.

On January 9, 2013, the employer was notified by two separate customers that unauthorized funds had been added to their credit card transactions from the restaurant. The Waterloo Police Department received a credit card statement for food purchased at the restaurant on December 5, 2012 and an unauthorized \$10.00 tip had been added to the transaction. The claimant was the server as identified by her name on the receipt. The employer gave the police the claimant's information and refunded the unauthorized \$10.00 tip.

On that same date, another customer brought in a receipt showing an unauthorized \$5.00 tip had been added to a transaction from January 6, 2013 in which the claimant was also the server. The employer apologized and gave the customer the unauthorized tip money. The employer discharged the claimant that same day even though she denied adding unauthorized tips.

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 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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 11, 2013 for adding unauthorized tips to two customers' credit card receipts. She was already on a final warning for attendance and her continued employment would have been detrimental to the employer's business. Although the claimant denies adding the tips to the credit card transactions, the preponderance of the evidence indicates otherwise.

Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated June 12, 2013, reference 01, is affirmed. 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs