

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL L GRAVES
Claimant

APPEAL NO. 07A-UI-03100-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTTISH RITE PARK INC
Employer

**OC: 02/25/07 R: 02
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Randall Graves filed an appeal from a representative's decision dated March 22, 2007, reference 01, which denied benefits based on his separation from Scottish Rite Park, Inc. After due notice was issued, a hearing was held on April 30, 2007 in Des Moines, Iowa. Mr. Graves participated personally and Exhibits A and B were admitted on his behalf. The employer participated by Nicole Hammer, Human Resources, and Jeff Halvorsen, Director of Culinary Services.

ISSUE:

At issue in this matter is whether Mr. Graves was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Graves was employed by Scottish Rite Park, Inc. from April 10, 2006 until February 21, 2007 as a full-time cook. On February 21, he was told by Jeff Halvorsen to remove a piece of beef from the serving line so that it would not be served to residents. He argued with Mr. Halvorsen about the issue and failed to remove the beef as directed. When questioned later as to why he allowed it to remain, Mr. Graves indicated he saw nothing wrong with the beef. He did, however, suggest to a coworker that she not eat the beef.

Mr. Graves was approximately 20 minutes late reporting to work on October 17, 2006 because of transportation issues. On or about that same date, he failed to serve a modified meal to a resident. He received a written warning on October 23 because the chicken strips he served were not cooked all the way through. He received a written warning on October 24 because of complaints that he refused to return to the kitchen for a second seating.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Graves' discharge was prompted by the fact that he failed to remove a piece of beef from the serving line as directed by his supervisor. Repeated failure to follow a supervisor's instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa 1990). Mr. Graves' failure of February 21 was an isolated instance of failing to follow his supervisor's instructions. He used poor judgment in substituting his judgment for that of his supervisor regarding the beef.

Mr. Graves was late reporting to work on only one occasion. The evidence did not establish a history of attendance infractions. On one occasion, he failed to serve a resident a modified meal as required. This constituted an isolated instance of simple negligence. He failed to make sure chicken strips were thoroughly cooked on one occasion. This incident represented a mere oversight. Although Mr. Graves may have balked at having to return for a second seating, he did comply with the request.

The employer's evidence established several good-faith lapses in good performance. However, the evidence did not establish a willful and wanton disregard for the employer's interests or standards. Although Mr. Graves may have been an unsatisfactory employee, his conduct did not rise to the level of disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 22, 2007, reference 01, is hereby reversed. Mr. Graves was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs