

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MEGAN R PETEREIT MARTIN**  
Claimant

**APPEAL NO. 11A-UI-09669-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TA OPERATING LLC  
TRAVEL CENTERS OF AMERICA**  
Employer

**OC: 06/19/11  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 12, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 16, 2011. Claimant participated. Darcy Knickerbocker, restaurant general manager, represented the employer. Exhibits One and Two were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Megan Petereit Martin was employed by Travel Centers of America as a full-time restaurant server from September 2010 until May 30, 2011, when Darcy Knickerbocker, restaurant general manager, discharged her from the employment. Mr. Knickerbocker was Ms. Petereit Martin's immediate supervisor during the last three or four months of the employment.

The final incident that triggered the discharge was a customer complaint reported to Fred Davis, field manager, on or about May 28, 2011. The customer alleged that the customer had received poor service because the two servers had been chatting with each other instead of attending to their work duties. Mr. Knickerbocker did not speak with the customer. Instead, Mr. Knickerbocker received only an e-mail message from Mr. Davis. Based on that information, Mr. Knickerbocker decided to proceed with discharging Ms. Petereit Martin from the employment and deleted her information from the work schedule he had been preparing on the business computer.

The work schedule would ordinarily be posted on Sunday. Ms. Petereit Martin worked her last shift on Sunday, May 29. Mr. Knickerbocker had already decided to end her employment. While Ms. Petereit Martin was in the office making a call to her husband, a coworker entered the office and pulled up the schedule on the office computer. The coworker had his own reasons for pulling up the schedule. Neither Ms. Petereit Martin nor the coworker was authorized to look

at the schedule on the computer, though Ms. Petereit Martin did have limited authority to use the computer in connection with performing her duties. When the coworker pulled up the work schedule on the computer, Ms. Petereit Martin observed that she was no longer on the schedule. Ms. Petereit Martin finished her shift shortly thereafter and left for the day.

The next day, Ms. Petereit Martin telephoned Mr. Knickerbocker to ask why she was off the schedule. Mr. Knickerbocker cited a non-specific customer complaint and prior customer complaints. When Ms. Petereit Martin pressed for more specific information, Mr. Knickerbocker ended the call. Ms. Petereit Martin did not know the particulars of the customer complaint.

Though the employer had received prior customer complaints concerning Ms. Petereit Martin, the employer is unable to provide dates or details concerning those matters.

### **REASONING AND CONCLUSIONS OF LAW:**

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 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the record establishes that the customer complaint forwarded by Mr. Davis was what triggered the discharge, not the unauthorized computer access that followed. The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish negligence, carelessness, or intentional misconduct in connection with the customer complaint. The mere allegation of misconduct is not enough. The employer presented even less evidence regarding the prior complaints and there is insufficient evidence to establish carelessness, negligence, or intentional misconduct based on the alleged earlier customer complaints. Though the evidence establishes that Ms. Petereit Martin had unauthorized access to the work schedule on the office computer, the evidence indicates that she did not initiate the unauthorized access or take steps to gain access, but instead merely benefitted from a coworker's actions. While the conduct indicates poor judgment, it did not rise to the level of misconduct that would disqualify Ms. Petereit Martin for benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Petereit Martin was discharged for no disqualifying reason. Accordingly, Ms. Petereit Martin is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Petereit Martin.

**DECISION:**

The Agency representative's July 12, 2011, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw