

**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**

**Appeal Number: 06A-UI-02730-JTT  
OC: 01/22/06 R: 03  
Claimant: Appellant (2)**

**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.

**STEVEN R PETERS  
740 CONGER ST  
WATERLOO IA 50703-5614**

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.

**ALLEN MEMORIAL HOSPITAL  
ATTN-PAYROLL  
1825 LOGAN AVE  
WATERLOO IA 50703**

**TOM MORITZ  
1695 BURTON AVE  
WATERLOO IA 50703**

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant Steven Peters filed a timely appeal from the February 27, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 28, 2006. Mr. Peters participated personally and was represented by Union Representative Tom Moritz. The employer failed to respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Peters was employed by Allen Memorial Hospital as a full-time maintenance employee from April 1976 until January 10, 2006, when Director of Human Resources Ken Leibold and Engineer Terry Flynn discharged him. As part of his duties, Mr. Peters maintained hospital

equipment including hospital beds and operating tables. Mr. Peters' duties were performed almost exclusively at Allen Memorial Hospital. However, the employer maintained additional facilities two blocks away from Allen Memorial Hospital and Mr. Peters would, on rare occasion, have to travel to the other buildings. In 2005, Mr. Peters utilized the employer's vehicles on five or six occasions in connection with trips to the employer's other buildings.

The final incident that prompted the discharge occurred on December 6, 2005, when Mr. Peters lost his driving privileges in connection with an arrest and prosecution for Operating While Intoxicated. Mr. Peters had been arrested on October 9, 2005 and was sentenced for the offense on January 2, 2006. After the arrest, but prior to the sentencing, Mr. Flynn told Mr. Peters that if he lost his license *a third time* he would be discharged from the employment. This incident was the second time Mr. Peters' driving privileges were suspended.

In 1996, Mr. Peters had lost his license in connection with an Operating While Intoxicated offense. For the following 2<sup>1/2</sup> years, Mr. Peters was required to maintain high-risk insurance and, therefore, did not operate the employer's vehicles. The employer did not discipline Mr. Peters in connection with that loss of his license and Mr. Peters was able to continue to perform his regular duties.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Peters was discharged for misconduct in connection with the employment. It does not.

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).

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).

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).

Because the employer failed to participate in the hearing, the evidence available to the administrative law judge is limited to the testimony of Mr. Peters. The employer has failed to present available evidence to corroborate the assertion that the employer discharged Mr. Peters for misconduct *in connection with* the employment. See Iowa Code Section 96.5(2)(a). The evidence in the record indicates that the employer discharged Mr. Peters based on conduct that occurred outside Mr. Peters' employment. Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). However, the evidence in the record fails to demonstrate that the employer had any policies in place that subjected Mr. Peters to possible discharge based on conduct that took place *outside* the employment. The evidence further indicates that Mr. Peters was able to perform his regular duties in the absence of a valid driver's license.

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

#### DECISION:

The Agency representative's decision dated February 27, 2006, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

jt/kk