

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD W PEER**  
Claimant

**APPEAL NO. 06A-UI-10362-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCOTTISH RITE PARK INC**  
Employer

**OC: 10/01/06 R: 02  
Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Scottish Rite Park filed a timely appeal from the October 23, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 7, 2006. Claimant Richard Peer participated. Human Resources Director Nicole Hammer represented the employer and presented additional testimony through Administrator and Chief Executive Officer Terry Penniman, Ed.D. Claimant's Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative file.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard Peer was employed by Scottish Rite Park as a full-time Dietary Supervisor from April 1990 until October 2, 2006, when Administrator and C.E.O. Terry Penniman discharged him. The final event that prompted the discharge was a Department of Inspections and Appeals survey that ended on September 13, 2006. At the end of the survey, the state surveyor met with the employer and discussed concerns the inspector had about the dietary department. The surveyor referenced a freezer gasket that needed to be replaced and that had resulted in frost buildup in the freezer. The surveyor referenced additional concerns about cleanliness and staff training. On September 18, Dr. Penniman met with Mr. Peer for the purpose of reviewing Mr. Peer's work performance. Dr. Penniman accused Mr. Peer of avoiding tasks, failing to provide proper feedback to Dr. Penniman, poor work quality and speed, taking too long to hire staff, wasting too much food and being flippant. Mr. Peer had been in his position for 16 years and Dr. Penniman had been the administrator for a year and a half. Mr. Peer received formal training in kitchen management before commencing employment with Scottish Rite Park and participated in ongoing continuing education. Though Dr. Penniman was displeased with Mr. Peer's work performance, Dr. Penniman did not clearly convey his expectations to Mr. Peer, did not take reasonable steps to follow up with Mr. Peer regarding the employer's expectations until prompted to do so by the state inspection, and took minimal steps to facilitate retraining of

Mr. Peer so that he could meet the employer's expectations. Mr. Peer continued to work to the best of his ability based on his reasonable understanding of his work responsibilities and within the organizational limitations of the workplace. On October 2, Dr. Penniman summoned Mr. Peer to a meeting, provided him with a written notice of termination and discharged him from the employment.

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

The question is whether the evidence in the record establishes that Mr. Peer 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). 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).

Though it was within the employer's discretion to discharge Mr. Peer from the employment, the greater weight of the evidence fails to establish misconduct that would disqualify Mr. Peer for unemployment insurance benefits. The evidence indicates that the employer discharged Mr. Peer for unsatisfactory work performance, but that Mr. Peer was working to the best of his ability and continued to perform his duties as he had for many years. The discharge was based in part on a personality conflict between Dr. Penniman and Mr. Peer. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Peer was discharged for no disqualifying reason. Accordingly, Mr. Peer is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Peer.

**DECISION:**

The Agency representative's October 23, 2006, reference 01, decision is affirmed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs