

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEONARD J PEAVY**  
Claimant

**APPEAL NO. 12A-UI-07629-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 05/27/12  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Leonard Peavy filed a timely appeal from the June 15, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 18, 2012. Mr. Peavy participated. Michelle Wilkie, Interim Human Resources Director, represented the employer.

**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: Leonard Peavy was employed by Prairie Meadows Racetrack & Casino as a full-time surveillance agent from 2005 until May 24, 2012, when Dan Byers, Director of Human Resources discharged him from the employment. On May 18, 2012, Mr. Peavy was arrested and charged with the criminal offense of Fraudulent Practices. Mr. Peavy was booked on the charge and posted bond. The charge stemmed from a second job Mr. Peavy held outside of the employment with Prairie Meadows. Mr. Peavy reported the arrest and charge to his immediate supervisor, Terry Mull. Mr. Mull arranged for Mr. Peavy to meet with Mr. Byers and with an onsite representative of the Iowa Racing and Gaming Commission (IRGC). The IRGC representative told Mr. Peavy that he would look into the matter and get back to him. On May 24, 2012, the IRGC representative notified Mr. Byers that the IRGC had suspended Mr. Peavy's gaming license. The suspension of the gaming license made Mr. Peavy ineligible to work in any pari-mutuel race track in Iowa. Mr. Byers notified Mr. Peavy that he was discharged from the employment based on the loss of the gaming license, but that Mr. Peavy could reapply in 60 days.

The employer has a written policy that requires employees to obtain and maintain an Iowa gaming license in order to continue in the employment. This was shared with Mr. Peavy at the start of his employment and Mr. Peavy was aware of the policy.

## 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).

In Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), the Iowa Supreme Court held that when a truck driver lost his insurability because of traffic tickets he accumulated, and thereby lost his ability to perform his driving duties, the loss was self-inflicted and constituted misconduct. In Cook, the claimant's employment required that he be able to operate motor vehicles. Through commission of traffic offenses and resulting convictions, the claimant rendered himself incapable of continuing in the employment.

The court's analysis in Cook provides guidance for the present case. The present case is distinguishable from Cook because Mr. Peavy's loss of license was not based on an admission of guilt or a conviction. Instead the loss of the license was based only on an allegation of misconduct, a criminal charge with nothing more. In addition, the conduct in question was wholly unrelated to the employment at Prairie Meadows. In this case, because Mr. Peavy has not been convicted and because the employer did not offer proof to establish by a preponderance of the evidence that Mr. Peavy engaged in fraudulent practices, the administrative law judge cannot find that Mr. Peavy's loss of his gaming license was a matter within his control. The evidence fails to establish misconduct in connection with the employment.

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

**DECISION:**

The Agency representative's June 15, 2012, reference 01, decision 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.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs