IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JEFFERY J HALVORSEN
Claimant

SCOTTISH RITE PARK INC
Employer

APPEAL NO. 07A-UI-09945-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/16/07 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Scottish Rite Park, filed an appeal from a decision dated October 24, 2007, reference 03. The decision allowed benefits to the claimant, Jeffery Halvorsen. After due notice was issued, a hearing was held by telephone conference call on November 13, 2007. The claimant participated on his own behalf. The employer participated by Human Resources Nicole Hammer and CEO Terry Pennaman.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jeffrey Halvorsen was employed by Scottish Rite Park from October 2, 2006 until September 19, 2007, as the director of culinary services. In June 2007 he received a memo of clarification from CEO Terry Pennaman documenting issues which had been discussed at a prior meeting. The concerns were lack of cleanliness in the kitchen and proper storing and labeling of food, for which the health inspectors had cited the employer. In addition, the memo covered concerns about lack of "consistency and palatableness" of the food, lack of proper training and supervision of staff, and the claimant's absence from the workplace for long periods of time during the workday, without notice to anyone. He was given 30 days to make improvement.

After the memo, improvement was seen in most of the areas of concern. In September 2007, problems began to reoccur, but no further disciplinary action was taken until Dr. Pennaman received complaints from the kitchen staff on September 18, 2007. Three workers came to him to report Mr. Halvorsen had come out of his office and began "yelling" at them, calling them stupid and incompetent, berating them for not doing their jobs the way he felt they should. Other kitchen staff were interviewed by the CEO and confirmed the statements by the others.

Dr. Pennaman met with the claimant on September 19, 2007, and he denied any inappropriate conduct towards his staff. The employer elected to discharge him that day.

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer acknowledged the last disciplinary action was taken against the claimant in June 2007 but nothing further was done when it was felt the quality of his work was once again becoming unsatisfactory. The final incident was an allegation of creating a hostile work environment by shouting at and berating his staff, which the claimant has denied.

The employer has presented no firsthand, eyewitness testimony regarding this final incident and the case was based entirely on hearsay, even though at least one of the witnesses is still employed at the facility. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of October 24, 2007, reference 03, is affirmed. Jeffrey Halvorsen is qualified for benefits, provided he is otherwise eligible.

_____
Bonny G. Hendricksmeyer
Administrative Law Judge

_____
Decision Dated and Mailed

bgh/kjw