

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY A PETEKAVICH
Claimant

APPEAL NO. 07A-UI-04719-NT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

CITY OF ANTHON
Employer

**OC: 01/21/07 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for misconduct
Section 96.3-7 – Recovery of overpayment of benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 26, 2007, reference 06, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on June 6, 2007. The claimant participated. The employer participated by Chad Thompson, attorney at law, and witnesses Keith Determan, mayor, and Ruth Roth. Exhibits 1, 2, 3, and 4 were received into evidence. Exhibits 5 and 6 were marked, but not received.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for the City of Anthon from March 6, 2006 until April 3, 2007, when he was discharged for failure to meet job requirements. Mr. Petekavich held the position of part-time police officer and was paid by the hour. His immediate supervisor was the city mayor. Mr. Petekavich was separated from his employment when he failed to secure a required firearm certification required by the Iowa Law Enforcement Academy for certified police officers. At the time of hire, the City of Anthon city council agreed to hire Mr. Petekavich provided that he met all hiring requirements for a certified police officer (Exhibit 1). Although the claimant was aware that as a condition for his ongoing employment with the City of Anthon he was required to be certified, Mr. Petekavich did not secure the certification required by the governing authority of the Iowa Law Enforcement Academy to meet the requirements of a certified police officer. When the claimant's lack of certification came to the attention of the current mayor, the claimant and another officer were sent letters from the City and were warned that the required certification must be obtained in order for employment to continue. Subsequently, the mayor verified through the Law Enforcement Academy that the certification had not been granted to the claimant because he had not met firearm certification requirements, although the claimant had communicated to the mayor that certification had taken

place. When it was officially determined that Mr. Petekavich was not certified as required, the City of Anthon determined that the claimant's employment could not continue, as a certified officer was required by law (see Exhibit 2).

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that the claimant was discharged under disqualifying conditions. The record establishes that at the time of hire, Mr. Petekavich was made aware that he needed to be certified as a police officer by the Iowa Law Enforcement Academy in order to maintain his position as a part-time police officer for the City of Anthon, Iowa. Because of a medical condition, the claimant was unable to attain or maintain certification because of his inability to pass firearms requirements; thus, the claimant was not certified as a police officer as required by Iowa law to function in that capacity. When the employer became aware that the claimant did not have certification, the employer acted reasonably by giving the claimant an opportunity to take action and attain the certification. When the certification was not obtained within a reasonable period of time, the claimant was discharged for failure to maintain the certification or licensing required for him to perform the duties of his job as a certified police officer. The employer acted reasonably in this matter upon being apprised that the claimant did not have the required certification. It appears that the statement made by the claimant may have delayed the employer's conclusion that the claimant did not have the required licensing.

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.

Although the administrative law judge is sympathetic to the claimant's situation, for the reasons stated herein, the administrative law judge finds that the employer has sustained its burden of proof in establishing that the claimant's failure to attain or maintain required licensing for the performance of his duties showed a disregard for the employer's interest and standards of behavior and thus was disqualifying misconduct under the provisions of the Iowa Employment Security Act.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits to which he was not entitled. These benefits must be recovered according to Iowa law.

DECISION:

The representative's decision dated April 26, 2007, reference 06, is hereby reversed. The claimant was separated under disqualifying conditions. Benefits are withheld, until the claimant has worked in and been paid wages equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid \$466.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw/css