

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY L LOVE**  
Claimant

**CITY OF APLINGTON**  
Employer

**APPEAL 16A-UI-10108-JP**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/21/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 13, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on October 19, 2016 at 3420 University Avenue, Suite A in Waterloo, Iowa. Claimant participated. Rhonda VanDerHart testified on claimant's behalf. Employer participated through Mayor Jason Mehmen, city clerk Deb Prier and Chief Michel Luze. Employer exhibit 1 was admitted into evidence with no objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a police officer from September 1, 2015, and was separated from employment on August 25, 2016, when he was discharged.

Claimant was discharged for failing to attend the Iowa Law Enforcement Academy within one year of his hire date. To be a police officer, claimant was required to enroll in the Iowa Law Enforcement Academy within one year of his hire date. Claimant was aware when he was hired of the condition that he had to enroll in the Iowa Law Enforcement Academy within one year of his hire date. Claimant was scheduled to attend the initial agility testing for the Iowa Law Enforcement Academy at Hawkeye Community College on August 16, 2016. The Iowa Law Enforcement Academy session started on August 29, 2016.

Prior to August 11, 2016, claimant provided a copy of his transcript to Chief Luze. Chief Luze then sent claimant's transcript along with a packet of information to Hawkeye Community College so claimant could enroll in the Iowa Law Enforcement Academy.

Around August 11, 2016, claimant was informed by Hawkeye Community College that there was an issue with his transcript. The transcript claimant had provided Chief Luze did not show he completed his two year degree in criminal justice, which was a requirement in order to enroll

in the Iowa Law Enforcement Academy. Claimant had completed a two year degree in criminal justice at DMACC (Des Moines Area Community College). Claimant contacted DMACC to get a copy of his transcript showing he had completed his two year degree. DMACC indicated to claimant that they would fax his transcript to Hawkeye Community College on August 11, 2016 but DMACC did not fax his transcript. On August 11, 2016, claimant e-mailed Amy Rieck, Administrative Secretary – Public Services Education and Training, discussing his transcript and stating that he did not know if he would be able to pass the agility test to get into the Iowa Law Enforcement Academy. Employer Exhibit 1. To successfully enroll in the Iowa Law Enforcement Academy, claimant had to pass an initial agility test on August 16, 2016. Claimant was aware he would have to pass the agility test when he was hired. Ms. Rieck sent claimant an e-mail on August 11, 2016 at 4:36 p.m. requesting his transcript be faxed as soon as possible and informed claimant to “Please show up for the PT as scheduled.” Employer Exhibit 1. On August 12, 2016, Jane Wagner, assistant professor, criminal justice, Hawkeye Community College, e-mailed Chief Luze, but not claimant, stating “if there is any discrepancy with the authenticity of that transcript or the transcript fails to show that [claimant] has been awarded the degree, he will not be permitted to test.” Employer Exhibit 1.

Claimant did not attend agility testing on August 16, 2016. Claimant left for Colorado in the afternoon on August 16, 2016. On August 16, 2016 at 2:43 p.m., Ms. Wagner e-mailed claimant and Chief Luze that the claimant did not attend the physical fitness test and they have not received his official transcript showing he completed his degree. Employer Exhibit 1. Ms. Wagner informed claimant and Chief Luze that they “will be unable to accept Mr. Love as a cadet for the Fall 2016 ILEA Basic Level II Academy.” Employer Exhibit 1. Claimant was not eligible to take the agility test at a later date. This was the last session claimant could attend prior to his one year hiring anniversary. The next session was scheduled for 2017. Claimant did not contact Chief Luze to let Chief Luze know he was not going to attend the agility test on August 16, 2016. Chief Luze advised Mayor Mehmen about the situation.

On August 25, 2016, Chief Luze, Mayor Mehmen, and claimant met regarding claimant’s failure to attend the agility test and therefore his failure to successfully enroll in the Iowa Law Enforcement Academy. Chief Luze does not believe claimant would have qualified for a hardship case extension. Because claimant was not enrolled in the Iowa Law Enforcement Academy, he could not continue being a police officer because his year one was expiring.

Claimant’s e-mail address is jefflove40@gmail.com. DMACC did not print claimant’s transcript until August 17, 2016. DMACC did not mail claimant his transcript until August 18, 2016.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age,

intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Workers in the law enforced profession reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. Iowa Admin. Code r. 501-3.1(1) states that “[o]fficers must be certified within one year of their employment[.]” Iowa Admin. Code r. 501-3.1(4) provides:

In accordance with Iowa Code section 80B.17, the one-year time period in which an officer must become certified is automatically extended for up to 180 days for an officer who is enrolled in training within 12 months of initial appointment. For purposes of this subrule, “enrolled” means physically present in and currently attending a basic certification training class.

However, Iowa Admin. Code r. 501-3.1(6) provides:

Should a person employed as a law enforcement officer *fail* to achieve certification within the time period or any extensions allowed by rule 501—3.1(80B), *that person shall not be eligible for employment as and shall not serve as a regular or a reserve law enforcement officer in the state of Iowa* for a period of not less than one year from the date the time period in which to achieve certification specified in rule 501—3.1(80B) expired, or from the date that the person was last employed as a regular law enforcement officer in the state of Iowa, whichever comes first. (emphasis added)

The employer has presented substantial and credible evidence that claimant failed to successfully the Iowa Law Enforcement Academy within one year of his hire date, a known condition of his employment. Claimant was scheduled to complete the required agility test on August 16, 2016, but he failed to attend the testing. Claimant’s argument that he should not be disqualified from benefits because DMACC did not provide him his transcript showing he completed his two year degree by August 16, 2016, is not persuasive. Claimant was aware when he was hired he had to be enrolled in the Iowa Law Enforcement Academy by September 1, 2016. Claimant was also aware that he had to complete the agility test prior to beginning the Iowa Law Enforcement Academy. Claimant provided to the employer his transcript that did not show he had completed the required two year degree. Claimant’s failure to provide the correct transcript was through no fault of the employer. Furthermore, on August 11, 2016, claimant was instructed via e-mail to have his correct transcript faxed to Hawkeye Community College and to still attend the agility test. Employer Exhibit 1. Even though claimant would not have been allowed to test without his correct transcript, he failed to attend the agility test as requested by Ms. Rieck. Employer Exhibit 1. Claimant also failed to contact Chief Luze to explain why he was not going to attend the test. This session of the Iowa Law Enforcement Academy was claimant’s last opportunity to be enrolled by September 1, 2016. Claimant’s failure to successfully enroll in the Iowa Law Enforcement Academy by September 1, 2016 disqualified him from working for the employer as a police officer, which was the position he was hired for.

Claimant did not rebut employer’s reason for the separation and his failure to successfully enroll in the Iowa Law Enforcement Academy by September 1, 2016, a known condition of his employment, was misconduct sufficient to warrant a denial of benefits. This is disqualifying misconduct.

#### **DECISION:**

The September 13, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs