

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIN L HUMPHREY**  
Claimant

**APPEAL NO: 13A-UI-13506-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST ASSET MANAGEMENT INC**  
Employer

**OC: 11/10/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

West Asset Management, Inc. (employer) appealed a representative's December 3, 2013 decision (reference 01) that concluded Martin L. Humphrey (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 2, 2014. The claimant participated in the hearing. Jeff Younker appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on April 1, 2013. He worked full time as a recovery specialist in the employer's West Des Moines, Iowa collection agency. His last day of work was November 12, 2013. The employer discharged him on that date. The reason asserted for the discharge was failure to pass a required test.

In early November 2013 the employer took on a new client contract, and the claimant was to be assigned to that account. To work on the account, recovery specialists had to pass a required third party credit bureau open book test. A score of 92 percent was necessary to pass. The claimant had taken and passed a somewhat similar test in April 2013, but when he took this new test the first time, on November 7, he scored only 80 percent. He retook the test twice more, both times on November 8, both times scoring only 85 percent. As a result of the claimant's failure to pass the test by the third attempt, the employer discharged the claimant.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to pass the third party credit bureau test after three attempts. A failure to successfully complete required course work or pass necessary tests is not evidence of misconduct where there is an attempt in good faith to satisfy the requirements. *Holt v. IDJS*, 318 N.W.2d 28 (Iowa App. 1982). The employer has not established that the claimant failed to make at least a good faith attempt to pass the test. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. A discharge solely due to not being capable of doing the expected work or not meeting the employer's standards does not constitute misconduct, and does not in and of itself relieve the employer's account from charge. 871 IAC 24.32(5). The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's December 3, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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