

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WYATT L KERN
Claimant

APPEAL NO: 07A-UI-02498-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM TECHNOLOGIES LLC
Employer

OC: 01/28/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Team Technologies, L.L.C. (employer) appealed a representative's March 1, 2007 decision (reference 01) that concluded Wyatt L. Kern (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 March 28, 2007. The claimant participated in the hearing. Carla Myers appeared on the employer's behalf. During the hearing, Claimant's Exhibit A and B were entered into evidence. 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?

FINDINGS OF FACT:

The claimant started working for the employer on January 31, 2005. He worked full time as a customer support representative in the employer's data storage business. His last day of work was January 31, 2007. The employer informed him on January 24, 2007 that January 31 would be his last day of work. The reason asserted for the discharge was not completing required certification programs.

The claimant had been hired through a cooperative program in which it was required to hire 25 percent of the participating interns. Part of the program requirements were that the interns were to complete training and testing for certifications in six areas. At the time of hire, the claimant had completed all of the coursework but had only passed the certification tests for two of the six areas. As of October 1, 2006, the claimant still had two areas for which he had not successfully passed the certification tests. On that date the employer advised him that he must complete the remaining certifications by December 31, 2006, which was later extended to January 31, 2007.

Of the two remaining areas, the first required the passage of three separate tests. The claimant passed one of the section tests in October 2006. The second section test he took and failed in

October, then took and passed in November. The final section test he took and failed in December, and was scheduled to retake the test on January 26, 2007. The sixth area required passage of a two-part test, which the claimant had not yet scheduled to take, as it built off of knowledge he needed to have mastered in the fifth area. When the claimant was told on January 24 that his last day was going to be January 31, he cancelled his scheduled January 26 test date because he knew he was already being discharged and determined that while he would pursue taking the test, he might as well conserve the money the test taking required until he had further opportunity for further preparation and study so that he could be more sure of passing the test. The employer acknowledged that the claimant had been diligently pursuing the taking of the tests, but determined that it could no longer wait for him to successfully pass the tests and obtain the certifications.

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).

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his failure to pass the required tests to obtain the necessary certifications. A failure to successfully complete required course work or obtain necessary licensure 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 claimant in this case did make a good faith attempt to satisfy the requirements. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, while the employer may have had a good business reason for discharging the claimant, his actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 1, 2007 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs