

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRA K WETZEL**  
Claimant

**APPEAL NO. 14A-UI-00303-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST ASSET MANAGEMENT INC**  
Employer

**OC: 12/08/13**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

The employer, West Asset Management, Inc. (West), filed an appeal from a decision dated January 2, 2014, reference 01. The decision allowed benefits to the claimant, Terra Wetzel. After due notice was issued, a hearing was held by telephone conference call on January 31, 2014. The claimant participated on her own behalf. The employer participated by Senior Director of Operations Jeff Younker and Customer Service Representative Evelyn Romero.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

**FINDINGS OF FACT:**

Terra Wetzel was employed by West Asset from May 29, 2010 until December 11, 2013 as a full-time recovery specialist. Personnel in this job must pass periodic testing to maintain the position.

Ms. Wetzel took the test on September 17, 2013. It was open-book and had two questions. She got only one correct. The employer had her take the test again that day and she failed again.

On December 3, 2013, she again took the test and once again failed. At that point she talked with a manager and said she found the area around her desk, where she took the test, to be too noisy and there were constant disruptions. He said she could take the test in a quiet place next time.

On December 10, 2013, she was asked to take the test again but did not remind her immediate supervisor she had permission to take the test in a quiet area, and again failed. Because she did not meet the requirement to pass the test, she was discharged on December 11, 2013.

The employer did not participate in the hearing through no fault of its own as it did not receive notice of the fact finding interview.

#### **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 claimant acknowledged failing the certification test four times. It may be true this was largely due to not having a quiet area in which to take the test. She was given permission to go to a quiet area to take the test after the third failure but she failed to remind her supervisor of this and agreed to take the test at her desk as before.

The administrative law judge must wonder at this failure on the part of Ms. Wetzel, especially as she was so concerned that her failures were due to not having a quiet area. But nonetheless it cannot be concluded she intentionally failed the test. A failure to successfully complete required course work 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).

**DECISION:**

The unemployment insurance decision dated January 2, 2014, reference 01, is affirmed. Terra Wetzel is qualified for benefits provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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