

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN C MATHISON**  
Claimant

**APPEAL NO: 14A-UI-09840-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRO TOW LLC**  
Employer

**OC: 05/18/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Pro Tow, L.L.C. (employer) appealed a representative’s September 11, 2014 decision (reference 05) that concluded Ryan C. Mathison (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 October 10, 2014. The claimant participated in the hearing. Jody Philip appeared on the employer’s behalf and presented testimony from one other witness, Michelle Michalec. 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.

**ISSUES:**

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

**OUTCOME:**

Affirmed. Benefits allowed. Employer not subject to charge in current benefit year.

**FINDINGS OF FACT:**

The claimant started working for the employer on July 7, 2014. He worked full time as a trainee tow truck driver. His last day of work was August 5, 2014. The employer discharged him on that date. The reason asserted for the discharge was that it was “not working out” because the claimant had not been able to secure the required licensure.

The claimant had taken the written test for the required license about three times before passing that test, which he did finally accomplish on or about July 25. The license also required a driving test, which would be done by appointment. As the claimant had only passed the written

test on or about July 25, he had not yet made an appointment for or taken the driving portion by August 5. The employer determined that it could not wait any longer and that the claimant appeared to lack the necessary abilities to successfully perform the job, so determined to discharge him.

The claimant established an unemployment insurance benefit year effective May 18, 2014. He reactivated the claim by filing an additional claim effective August 24, 2014.

### **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. Rule 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. Rule 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 inability to secure the necessary license and lack of ability to perform the job. A failure to successfully complete or pass necessary examinations 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). A discharge due to a lack of ability to satisfactorily complete work as expected does not constitute misconduct, and does not in and of itself relieve the employer's account from charge. Rule 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters

immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2013 and ended December 31, 2013. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's September 11, 2014 decision (reference 05) 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. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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