

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN P KILLEAN
Claimant

APPEAL NO. 08A-UI-05974-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF CLINTON
Employer

**OC: 06/01/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

City of Clinton (employer) appealed a representative's June 24, 2008 decision (reference 01) that concluded Ryan P. Killean (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 15, 2008. The claimant participated in the hearing with his attorney, Michael Meloy. Paul Walter, the employer's attorney, represented the employer. Mark Regenwether, the fire chief, testified 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant on November 13, 2006, to work as a full-time firefighter/paramedic. At the time of hire, the parties understood the claimant was on probation for one year. At the end of his probation, the employer expected the claimant to be a registered EMT. This meant the claimant had to become certified by taking a class and passing a national test.

The claimant started taking a class for the test on November 30, 2006. He completed the class on February 21, 2007. The claimant took the written test two times within his year's probation but did not pass. The employer extended the claimant's probation for two months so the claimant could take the test a third time. Again, the claimant did not pass the test.

After the claimant signed up for a refresher course, the employer gave him another four months to pass the test and become certified. The claimant completed the refresher course and took the test two more times. The claimant received a letter on May 12 informing him that he had passed the second written test he had taken in 2008. After the claimant received this letter, he understood he had met the employer's requirement for continued employment. The claimant

did not realize he had to complete a practical skills test before he would become certified. Even though the employer did not have any problems with the claimant's work performance, the employer discharged the claimant on May 15, 2008, because he had not met the conditions of his continued employment. The claimant completed the practical skills test on May 31, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant took the necessary steps to complete the conditions of his continued employment. Unfortunately, the claimant did not pass the written test until May 2008, the fifth time he had taken the test. After the claimant learned he had passed the test, he did not realize he had to also complete and pass a practical skills test to meet the requirements of his continued employment. Since the claimant continued taking tests in an attempt to pass, his failure to meet conditions of his employment as of May 15, 2008, does not amount to work-connected misconduct. The claimant did not intentionally fail the test four times. He may have used poor judgment if he delayed in taking the test after he took the first class, but poor judgment does not constitute work-connected misconduct. At the time of his discharge, the claimant complied with the employer's laws, but not with the conditions of his continued employment. While the employer established business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. As of June 1, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's June 24, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 1, 2008, the claimant is qualified to receive benefits, provided he meets

all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css