IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GARY A ZEISER
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL NO. 09A-UI-09111-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 12/14/08
Claimant: Respondent (5)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (employer)) appealed a representative's June 15, 2009 decision (reference 01) that concluded Gary A. Zeiser (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2009. The claimant participated in the hearing. Dave Dalmasso appeared on the employer's behalf. During the hearing, Exhibit A-1 was 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.

ISSUES:

Was the employer's protest timely?

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective December 14, 2008. A notice of claim was mailed to the employer's last known address of record on December 23, 2008. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by January 2, 2009. The protest was not noted as filed until the employer further protested a May 8, 2009 quarterly statement of charges, which was after the date noticed on the notice of claim. The employer's human resources representative, Mr. Dalmasso, had personally completed the protest form on December 29, 2008 and had personally observed the protest be successfully processed through the employer's fax machine for transmission to the Agency Claims Section without any error.

The claimant started working for the employer on October 18, 2006. He worked full time as a Midwest regional over-the-road truck driver. His last day of work was December 17, 2008.

Approximately 4:00 a.m. on December 17, the claimant was, as instructed, picking up a load from the employer's North Liberty yard. It was extremely dark due to the time and because of a severe snow storm. The claimant believed he had felt the trailer brakes free up, but after he drove about a mile, he determined the trailer brakes were frozen, so that he was in essence dragging the trailer. He contacted the yard, and he was instructed to return to the yard, even though this could have caused additional damage. The employer ultimately determined it would have to replace four tires at a cost of about $1,000.00. As a result of this incident, the employer discharged the claimant. There had been no prior disciplinary issues regarding the claimant.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the employer's protest can be treated as timely. The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code Section 96.6-2 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative properly transmitted a completed protest into the Agency within the time for filing a timely protest. The administrative law judge concludes that the failure to have the protest received and noted as received within the time prescribed by the Iowa Employment Security Law was due to error, delay, or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the protest and appeal.

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 that 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 that 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 driving with locked trailer brakes on December 17, 2008 and the resulting damage. Under the circumstances of this case, the claimant's actions were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or due to a good-faith error in judgment or discretion. 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 June 15, 2009 decision (reference 01) is modified with no effect on the parties. The protest in this case was timely. 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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