

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYON J KUBISZEWSKI
Claimant

APPEAL NO. 09A-UI-09308-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 05/24/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Bryon Kubiszewski, filed an appeal from a decision dated June 26, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 15, 2009. The claimant participated on his own behalf. The employer, Heartland Express, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bryon Kubiszewski was employed by Heartland Express from June 2008 until January 1, 2009 as a full-time over-the-road truck driver. The claimant was scheduled to bring his truck into the Iowa terminal on December 19, 2008, because there was a leak in the cooling system. He was not able to arrive until 11:00 p.m. but by then the shop was closed for the weekend. The dispatcher instructed him to drive the truck to his home base in Hammond, Indiana, where he was headed for three days of "home time."

When Mr. Kubiszewski arrived in Indiana, he called dispatch for instructions because a new policy had been issued that the trucks were to be left to idle if the outdoor temperature went below 20 degrees. The claimant was leaving for three days out of town and the truck could not be left idling for that long because of the coolant leak and he would not be there to keep filling the coolant tank. The dispatcher asked him what the outdoor temperature was in the area and Mr. Kubiszewski said it was in the 30s. He was then instructed to shut the truck off and secure it.

When the claimant returned from his out of town visit on December 23, 2008, he attempted to start the truck but it was frozen. The employer was notified and arrangements were made to have it towed to a garage. When the truck was repaired on January 1, 2009, the claimant

notified dispatch for his next load but was transferred to the terminal manager who informed him he was discharged because he had failed to follow company policy to leave the truck idling.

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 issue is not whether the employer made a correct decision in separating the claimant, 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 misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). In the present case the claimant may have violated company policy but it was under the specific instructions of the dispatcher when he informed the employer of the situation with the truck.

Mr. Kubiszewski could not have left the truck to idle for three days or all of the coolant would have run out and damaged the engine beyond repair. He followed the instructions given to him by the dispatcher and so this situation cannot even be considered to be poor judgment on his part, but poor judgment on the part of the employer's agent. There is not evidence of willful misconduct or negligence and disqualification may not be imposed.

DECISION:

The representative's decision of June 26, 2009, reference 01, is reversed. Bryon Kubiszewski is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs