

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEWEY L HARRIS
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HEARTLAND EXPRESS INC OF IOWA
2777 HEARTLAND DR
CORALVILLE IA 52241

Appeal Number: 06A-UI-05195-HT
OC: 04/23/06 R: 12
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Heartland Express, filed an appeal from a decision dated May 12, 2006, reference 01. The decision allowed benefits to the claimant, Dewey Harris. After due notice was issued, a hearing was held by telephone conference call on June 1, 2006. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Leah Kahrs and Terminal Manager Thom Kasenberg. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Dewey Harris was employed by Heartland from February 21, 2003 until April 27, 2006. He was a full-time over-the-road truck driver. At the time of hire the claimant received, and signed an acknowledgement for the employee handbook. The employer's dress code requires men to have a hair length above the collar.

On April 27, 2006, the claimant was at the Columbus, Ohio, terminal. Terminal Manager Thom Kasenberg noticed the claimant's hair was in a ponytail which extended past his collar in back. When approached, the claimant stated he was not aware of any policy regarding hair length and was provided with a copy of the handbook and his acknowledgement of receipt. The terminal manager said he could not be dispatched in company equipment until he cut his hair to an appropriate length. Mr. Dewey was offered the use of a company car and directions to the nearest salon to have his hair cut.

The claimant asked if the employer was going to pay for the hair cut and was told no. He maintained it was against his religion as an American Cherokee, to have his hair cut. Mr. Kasenberg gave him the choice of being discharged or having his hair cut and he elected to be discharged.

Dewey Harris has received unemployment benefits since filing a claim with an effective date of April 23, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised of the employer's dress code which required men to have a hair length above the collar. He elected to ignore the dress code and wear his hair longer than allowed. When given the choice of cutting his hair or being discharged, the claimant elected to be discharged.

The claimant denied the employer's assertion and stated he had been willing to get his hair cut when he was fired by the employer anyway. The administrative law judge recognizes this is a situation where the credibility of the witnesses is the determining factor. In this case the judge finds the employer to be more credible based largely on the argument that the company does not discharge employees lightly, especially ones who have worked for several years and for which the employer has invested time and training.

The judge finds the claimant to have been discharged for violating the company policies and for refusing the instructions of a superior to comply with those policies, even when given notice he would be discharged for refusing. This is insubordination and is conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 12, 2006, reference 01, is reversed. Dewey Harris is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,011.00.

bgh/kkf