

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIANA MARA
Claimant

APPEAL NO. 08O-UI-03795-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 01/13/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Juliana Mara filed an appeal from a representative's decision dated February 1, 2008, reference 01, which held her eligible to receive unemployment insurance benefits from January 13, 2008 until January 26, 2008 upon a finding that she resigned effective January 28, 2008 but was terminated from employment on January 10, 2008, holding that the claimant's resignation was not caused by the employer. The employer also initially appealed the determination but subsequently withdrew its appeal. The employer's request to withdraw its appeal was approved on February 20, 2008 by an administrative law judge. Subsequently, the claimant filed an appeal to the Employment Appeal Board and the matter was remanded for hearing on the separation.

A hearing was held by telephone conference call on May 5, 2008. Ms. Mara participated personally. Participating on the claimant's behalf was her Attorney at Law Mr. Matt Reilly. Employer participated by Tom Logel, Field Department Manager and Leah Peters. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant quit her employment for good cause attributable to the employer or whether the claimant was separated for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by this employer from August 1997 until January 10, 2008 when she was separated by action of the employer. Ms. Mara was employed as a full-time fuel department employee and was paid by the hour. Her immediate supervisor was Tom Logel.

On Monday, January 7, 2008 the claimant requested to leave early for an unspecified reason. Subsequently Mr. Logel, the claimant's supervisor, inquired as to whether the claimant was

having a health problem or whether the claimant had an appointment for a "job interview." Ms. Mara was truthful indicating that she did have a job interview scheduled for that afternoon. In response to Mr. Logel's questioning as to why the claimant would want to look for new employment, Mr. Mara cited difficulty in working with another employee and not having access to computer programs needed to perform her duties. The claimant was asked if she had considered attempting to transfer to different department in the company. Ms. Mara responded in the negative.

On Thursday, January 10, 2008 Ms. Mara requested to speak to her supervisor and stated that she needed to leave again at 2:00 p.m. that day for another appointment. Because Mr. Logel seemed to be very upset by the claimant's request to have time off for a second interview, Ms. Mara asked if Mr. Logel wanted her to "stay, leave or give notice." It appears that Mr. Logel did not immediately respond but instead went to the company's human resource department. Upon his return the claimant was given three choices, informed that she could "leave now, leave at noon or leave at 2:00 p.m." the time of her appointment. Because of the manner in which Mr. Logel asked the question, Ms. Mara asked Mr. Logel "if he meant for good" and Mr. Logel responded in the affirmative. The claimant was instructed to turn in her badge and timecard and informed that human resources would contact her about any outstanding vacation pay. Based upon the employer's statements the claimant reasonably concluded that she was being discharged from employment at that time.

Ms. Mara completed a portion of an exit interview that had been mailed to her believing that it was necessary for her to do so in order to receive outstanding vacation pay. The claimant had not provided notice of her intention to leave employment to the employer prior to being separated from employment. The claimant would have provided notice had she been successful in securing new employment. No job offer was made by the other perspective employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant quit her employment with good cause for reasons attributable to the employer or whether the claimant was discharged from employment. Based upon the evidence in the record the administrative law judge concludes that the claimant was discharged from employment after informing her employer that she had a job interview. The evidence in the record establishes that the claimant did not make any statements or take any overt actions which would lead the employer to reasonably concluded that the claimant was voluntarily quitting her job at that time. In response to a specific inquiry being made by her supervisor Ms. Mara was truthful in indicating that she had wanted off work on two occasions during the week ending January 12, 2008 to attend a first and second job interview with a perspective employer. In response to Mr. Logel's inquiries the claimant stated her dissatisfaction with certain aspects of her employment with Heartland Express Inc. but did not provide notification to the employer in any manner of her intention to leave at that time or in the foreseeable future. Ms. Mara dismissed the suggestion of attempting to transfer to a different department because of a potential conflict of interest with her husband's employment.

Although the claimant did not provide any certain date or indicate in any manner that she was in fact leaving employment, the employer for its own business reasons informed the claimant on January 10, 2008 that that would be her last day of employment and she had three choices, leave immediately, leave at noon or leave at 2:00 p.m. the time of her second interview. Mr. Logel testified that "if the claimant was going to leave" it would interfere with his job responsibilities in the fuel department. The employer thus made a management decision to

separate the claimant from employment rather than face any uncertainties in the future as to how long the claimant would remain in employment. Making application for employment with other perspective employers is not in and of itself misconduct in connection with one's employment. The claimant was given permission to be off work for specified periods during the week in question. Ms. Mara had not conveyed to her employer either by statement or overt action any attempt to sever the employment relationship.

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.

DECISION:

Representative's decision dated February 01, 2008 ,reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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