

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE E KENNEDY

Claimant

APPEAL NO. 07A-UI-11672-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

**OC: 10/28/07 R: 12
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joyce Kennedy filed an appeal from a representative's decision dated December 12, 2007, reference 01, which denied benefits based on her separation from Heartland Express, Inc. of Iowa (Heartland). After due notice was issued, a hearing was held by telephone on January 8, 2008. Ms. Kennedy participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Kennedy was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Kennedy was employed by Heartland as an over-the-road driver from September of 2002 until October 24, 2007. She was told she was being discharged because she had too many incidents involving the employer's vehicle. The last incident occurred approximately two to three weeks before the separation. On that occasion, she dented the front bumper of the tractor while attempting to back up at a customer location.

Ms. Kennedy always reported her incidents to the risk management personnel as required. She did not have any incidents involving damage to property belonging to anyone other than Heartland. None of the incidents were reportable to the Department of Transportation. Ms. Kennedy was never warned, either verbally or in writing, that her continued employment was in jeopardy as a result of her incident record. It was her understanding that any damage she caused would be paid for from her safety bonus.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. See 871 IAC 24.32(8). In the case at hand, Ms. Kennedy was discharged because of incidents in which there was damage to the employer's vehicle. However, the final incident was at least two weeks before the discharge. The employer did not participate in the hearing to explain why there was a delay between the final incident and the discharge. Absent justification for the delay, the administrative law judge concludes that the employer has failed to establish a current act of misconduct.

Even if the administrative law judge were to conclude that there was a current act, the evidence still would not establish disqualifying misconduct. Ms. Kennedy was never warned that she was engaging in conduct that might result in her discharge. The administrative law judge does not believe she intentionally and deliberately engaged in actions that resulted in damage to the vehicle. Although she may have been negligent on some occasions, negligence constitutes disqualifying misconduct only if it is so recurrent as to manifest a substantial disregard of the employer's standards and interests. See 871 IAC 24.32(1). The employer did not participate in the hearing to identify the dates of Ms. Kennedy's incidents. Therefore, the administrative law judge cannot conclude that her negligence was tantamount to misconduct.

For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated December 12, 2007, reference 01, is hereby reversed. Ms. Kennedy was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css