

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT E KIRCHHOEFER JR
Claimant

APPEAL NO: 09A-UI-08917-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 04/19/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (employer)) appealed a representative's June 12, 2009 decision (reference 01) that concluded Robert E. Kirchhoefer, Jr. (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2009. The claimant participated in the hearing. Lea Peters appeared on the employer's behalf and presented testimony from two witnesses, Brian Janssen and Kurt Stephenson. 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.

ISSUE:

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 started working for the employer on July 31, 2002. He worked full time as a regional driver. His last day of work was April 22, 2009.

On or about April 1, 2009 the claimant had a phone conversation with his fleet manager, Mr. Stephenson, regarding a request he was making to be off on vacation the first two weeks of August. In the conversation the claimant also commented about how he was thinking about retiring from trucking and that he was "looking into doing other things." Mr. Stephenson got the impression that the claimant was not intending to return at the conclusion of his vacation time, but he did not confirm with the claimant as to whether this meant the claimant was giving his notice of resignation. Rather, he simply noted his impression as fact in the employer's driver profile. When Mr. Janssen, the regional director of operations, became aware that the claimant had supposedly "given his notice," he spoke to the claimant on April 22 and told him the employer was accepting the resignation effectively immediately. The claimant attempted to refute the assertion that he had given his notice of resignation, but the employer would not allow him to do so. As a result, his employment ended as of that day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he resigned by discussing the possibility of not returning from his vacation and looking into doing other things. Merely speculating about quitting or doing something else is not tantamount to quitting. Without a direct statement that the claimant was clearly giving notice, preferably one that is written so as to be unambiguous, the statements relied upon by the employer do not show an unambiguous intention to quit; further, when the employer addressed the matter with the claimant on April 22, he unambiguously denied that he in fact intended to quit. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but 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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 which 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 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. 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 the employer effectively discharged the claimant was his potential quitting to do something else. Thinking about or looking to do something else is not misconduct. 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 12, 2009 decision (reference 01) is affirmed. The claimant did not voluntarily quit and 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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