

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK S WISE**  
Claimant

**APPEAL NO. 10A-UI-05770-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 03/14/10**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mark Wise filed an appeal from a representative's decision dated April 9, 2010, reference 01, which denied benefits based on his separation from Heartland Express, Inc. of Iowa (Heartland). After due notice was issued, a hearing was held by telephone on June 7, 2010. Mr. Wise participated personally. The employer participated by Dave Dalmasso, Human Resources Representative.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wise was employed by Heartland from November 7, 2007 until March 15, 2010 as an over-the-road driver. He was discharged because of a verbal altercation with the yard manager, Conrad Waltman, on March 14. Mr. Waltman asked him to update his hours for March 11, 12 and 13. Mr. Wise indicated he would send in the hours by QUALCOMM, a method he had used in the past. Mr. Waltman then indicated he would need to see his log book.

In response to the request for his log, Mr. Wise replied, "you're shitting me." Mr. Wise was already perturbed by the fact that he had to wait in the rain for several minutes while Mr. Waltman carried on a telephone conversation. He went to his vehicle to get the requested log book and, while there, sent in his hours for March 11, 12, and 13. When he returned to the window to turn in the log book, Mr. Waltman told him he was not going "fucking" anywhere. Both parties used profanity during the exchange but there was no name-calling. One other manager was present in Mr. Waltman's area at the time. As a result of the incident, Mr. Wise was discharged on March 15. The above matter was the sole reason for the separation.

**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). Mr. Wise was discharged because of a verbal altercation with a yard manager, during which they both used profanity. The employer was aware before the hearing that Mr. Wise was contending that Mr. Waltman also used profanity during the exchange. The employer did not offer any evidence to refute the contention.

Mr. Wise did not use profanity in a name-calling context. He did not refuse to update his hours and did not refuse to turn in his log book as requested. Therefore, the profanity was not used in the course of refusing to obey a reasonable directive. It was not used in front of Mr. Waltman's subordinates so as to undermine his management authority. It is unreasonable to expect an over-the-road truck driver to be docile and well-mannered at all times. Mr. Wise did not have a history of such conduct. At most, his conduct represented no more than a single "hot-headed" incident or a good-faith error in judgment. Conduct so characterized is not considered misconduct within the meaning of the law.

The employer contended that Mr. Wise threatened Mr. Waltman with physical harm. This contention was not established to the satisfaction of the administrative law judge. The employer did not present testimony from either Mr. Waltman or the other manager who was present at the time. Mr. Wise denied that there was any threat. On the whole, the employer failed to establish that Mr. Wise deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. While the employer may have had good cause to discharge him, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated April 9, 2010, reference 01, is hereby reversed. Mr. Wise was discharged by Heartland but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs