

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES THOMAS
Claimant

APPEAL NO. 10A-UI-17384-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 11-14-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 15, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 4, 2011. The claimant participated in the hearing with Attorney Elizabeth Norris. Lea Peters, Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Heartland Express from December 30, 2009 to November 11, 2010. When the claimant returned to the terminal in Olive Grove, Mississippi, November 11, 2010, the mechanic looked through the bag where he keeps all of his possessions and found an inverter. Inverters are used to run appliances in the trucks such as televisions, microwaves, refrigerators, and computers, and use of invertors is strictly prohibited by the employer (Employer's Exhibits One and Two). The claimant lives out of his bag, staying with his sister or cousin when he is not on the road, and had the inverter in his bag with basically all of his worldly possessions because his previous employer allowed drivers to use inverters. The claimant had not used the inverter since beginning his employment with Heartland and there were no appliances in his truck when it was inspected. He was aware of the employer's policy prohibiting the use of inverters but did not understand that simply possessing one would lead to his discharge. The employer terminated his employment immediately for having an inverter in the truck.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer believes the claimant violated the inverter policy and that the policy is crystal clear, it is open to interpretation. Under Termination Policy it lists, "Any abuse or alterations to the equipment, including the use (emphasis added) of inverters." In the Company Tractor & Trailer Information it says, "Abuse or alterations to Heartland Express equipment is cause for dismissal. Heartland Express does not allow inverters or linears. Violations of this policy are grounds for immediate termination of employment. If in doubt, ask!" There is no doubt that the *use* of inverters is strictly prohibited; the policy is not as clear with regard to possession of an inverter, however, as the policy does not specifically address that issue. In this case, the claimant credibly testified he never used the inverter while working for Heartland but it was left in his bag, with all of his other possessions, from when he worked for a previous trucking company that allowed the use of inverters. There were no appliances in the claimant's truck and no evidence that he ever used the inverter. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The December 15, 2010, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw