

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY F CARTER
Claimant

APPEAL NO. 11A-UI-14294-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 08/14/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 20, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 20, 2011. The claimant participated. The employer participated by Lea Peters, human resources generalist. The record consists of the testimony of Lea Peters and the testimony of Gary Carter.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an over-the-road trucking company. The claimant was hired as a full-time driver on March 19, 2008. His last day of work was August 10, 2011. He was terminated on August 10, 2011.

The incident that led to the claimant's termination occurred on August 10, 2011. The claimant's truck had a gas generator in the front passenger seat. The claimant used the generator to power a microwave oven so that he could cook food for himself when he was forced to stop driving. The gas generator held approximately one pint of gasoline and was a DOT approved container. DOT officials had seen the gas generator and told the claimant that it was permissible. The employer had no specific rule against carrying a gas generator. The employer considered this a safety violation. The claimant had never been given a warning or other form of discipline prior to his termination.

REASONING AND CONCLUSIONS OF LAW:

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. A

mistake of judgment or discretion in an isolated situation is not misconduct. The employer has the burden of proof to establish misconduct.

There is insufficient evidence of misconduct in this case. The claimant was terminated because he was carrying a gas powered generator in the passenger side of the truck cab. The claimant had the generator to power a microwave oven. The claimant testified that it was a small amount of gas and that it was in a DOT approved container. DOT officials had seen the generator and told the claimant it was permissible. The employer considered the claimant's action to be serious safety violation. The employer conceded that there was no specific safety rule that prohibited what the claimant was doing. The claimant had never been warned about this generator or any other safety violation. Under these circumstances, the most that can be said is that the claimant used poor judgment by carrying the generator. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 20, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw