

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARON K LYNCH**

Claimant

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**APPEAL NO: 10A-UI-02612-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/13/09**

**Claimant: Respondent (4-R)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(9) – Suspension  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated February 8, 2010 reference 01, that held the claimant was not discharged for misconduct on December 13, 2009, and benefits are allowed. A telephone hearing was held on April 2, 2010. The claimant did not participate. Lea Peters, HR Generalist, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

Whether the claimant is overpaid benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time over-the-road driver on May 7, 2008. The claimant was placed on administrative leave without pay on December 9, 2009 for an accident investigation. The employer lifted the suspension and allowed the claimant to return to work on January 18, 2010 when it was determined that the accident was not preventable. The employer is not protesting this period of unemployment. The claimant worked and was paid gross wages of \$612.16 on January 29 for his work the week ending January 22nd.

The claimant had an accident near Brentwood, New York on February 4, 2010. In order to drive around a construction area while going under a bridge, the claimant swung his semi toward the down-side of it and his trailer topped the bridge causing some damage. The claimant was not issued any traffic citation. The claimant was suspended on February 9, and discharged on February 11 for what the employer determined was a preventable accident.

The claimant failed to respond to the hearing notice.

## REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The administrative law judge concludes the claimant was not suspended for misconduct on December 9, 2009, and no disqualification is imposed during this period until his return to work on January 18, 2010. The employer is not protesting this period of unemployment.

The administrative law judge further concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on February 11, 2010.

While the claimant struck the bridge, he was trying to avoid a construction area that caused him to swing wide and hit the down-side or low end of the bridge. Since there was no traffic citation, it does not appear the claimant violated any traffic law in the accident that would show intent to disregard some safety clearance or other standard. While the employer concluded it was a

preventable accident, a single act of evidence of negligence does not constitute job disqualifying misconduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes there is an issue regarding an overpayment of benefit for the week ending January 23, 2010 that is remanded to claims for a determination, because the claimant earned excessive wages.

The claimant returned from a suspension on January 18, and worked the remainder of the week earning gross wages of \$612.16. The claimant is disqualified from receiving any benefit due to earning excessive wages.

**DECISION:**

The department decision dated February 8, 2010, reference 01, is modified. The claimant was not suspended for misconduct on December 9, 2009, and no disqualification is imposed until his return to work on January 18, 2010. The claimant is disqualified the week ending January 23,

2010 due to earning excessive wages. The claimant was not discharged for misconduct on February 11, 2010. Benefits are allowed, provided the claimant is otherwise eligible. The overpayment issue for the week ending January 23, 2010 is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs