

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT J CRANFORD
Claimant

APPEAL NO: 10A-UI-10604-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 06/13/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed a representative's July 20, 2010 decision (reference 01) that concluded Robert J. Cranford (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 15, 2010. The claimant participated in the hearing. Lea Peters appeared on the employer's behalf. 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 the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 8, 2008. He worked full time as an over-the-road truck driver. His last day of work was May 25, 2010. The employer discharged him on that date. The reason asserted for the discharge was failing to deliver a load on time.

The claimant had been given a warning on January 26, 2010 regarding the making of a late delivery. Previously he had been verbally counseled on late deliveries on November 19, 2008, November 24, 2008, and June 8, 2009.

On May 22, 2010 the claimant picked up a load in Chester, Virginia, initially scheduled for delivery in Black Mountain, North Carolina, at 6:00 a.m. on May 24. The claimant was permitted and did take the load to his home in North Carolina on May 22, pending the delivery appointment; from his home it is about a two and a half hour drive to the Black Mountain delivery site.

The claimant had been suffering from an abscessed tooth, which was preventing him from eating or sleeping. Prior to May 24 the claimant had told the employer's dispatch that he needed to get to the doctor so that the load should be relayed with another driver; however, by

the morning of May 24 no arrangement had been made to relay the load to another driver. The claimant contacted the employer on the morning of the 24th to report that he still had not eaten or slept, and questioned his ability to make the drive for the delivery. However, while by that time the load was already late for the 6:00 a.m. delivery appointment, dispatch instructed the claimant to go ahead and make the delivery, and then an arrangement would be made to get him some home time so he could get to the doctor. The claimant proceeded to make the delivery at about 11:00 a.m. that morning, about five hours later than the originally scheduled delivery appointment. Because of this final late delivery, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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). The question is not whether the employer was right 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 cited by the employer for discharging the claimant is his late delivery on May 24 after prior warning. Misconduct connotes volition. Huntoon, supra. Repeated tardiness or lateness can constitute misconduct, however, an occurrence due to illness cannot constitute work-connected misconduct since it is not volitional or intentional, even if the employer was fully within its rights to impose discipline up to or including discharge. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007); Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Because the final occurrence was due to properly reported illness or other reasonable grounds, there was no final or current occurrence of an unexcused late delivery as necessary to establish work-connected 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 July 20, 2010 decision (reference 01) is affirmed. 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

ld/pjs