

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS F GULOTTA
Claimant

APPEAL NO. 10A-UI-01513-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 12/20/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge of Misconduct

STATEMENT OF THE CASE:

Nicholas Gulotta filed an appeal from a representative's decision dated January 21, 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 March 11, 2010. Mr. Gulotta participated personally. The employer participated by Dave Dalmasso, Human Resources Representative, and Nathan Pape, Orientation Facilitator. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Gulotta 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. Gulotta began working for Heartland on August 30, 2006 as an over-the-road driver. He was off work beginning January 2, 2009 due to a work-related injury to his shoulder and upper back. He was released to return to work on November 16.

Because he had been away from work for an extended period of time, Heartland required Mr. Gulotta to pass a road test before he could drive again. He underwent approximately 10 to 15 minutes of classroom instruction before the road test on December 1. He failed the road test and was, therefore, discharged. According to the facilitator, he failed to come to a complete stop at a stop sign and was not traveling five miles under the posted speed limit as instructed. It was also noted that he made turns in seventh gear rather than sixth gear as instructed. Drivers are not given a second chance to pass the test. Mr. Gulotta had not received any tickets while driving for Heartland. He had not been involved in any preventable accidents or caused any other concerns about his driving during the employment. The failure to pass the road test on December 1, 2009 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. Gulotta was discharged because he failed a driving road test on December 1, 2009. The test was not required because he had an unsatisfactory driving history but because he had been away from work for close to one year. The parties disagree as to whether he came to a complete stop or a rolling stop at the stop sign. Because there is no independent proof to support either party, any doubt will be resolved in Mr. Gulotta's favor since the employer had the burden of proof.

Although Mr. Gulotta was not traveling five miles under the posted speed limit, he was not exceeding the speed limit. He turned corners in a gear different than that designated by the facilitator. At most, he was negligent in failing to listen and follow the instructions he had been given in the classroom portion of the testing. Although he may have been negligent on December 1, he did not have any history of negligence. Negligence constitutes misconduct only if it is so recurrent as to manifest a substantial disregard for the employer's interests or standards. 871 IAC 24.32(1). There had been no previous issues with Mr. Gulotta's driving during the two years he drove before his injury.

The evidence failed to establish that Mr. Gulotta deliberately and intentionally engaged in conduct he knew to be contrary to the employer's expectations. While the employer may have had good cause to discharge him, conduct that might warrant a discharge from employment 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 January 21, 2010, reference 01, is hereby reversed. Mr. Gulotta was discharged by Heartland but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs