

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY GLOSEMEYER**  
Claimant

**APPEAL NO. 08A-UI-01117-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 01-06-08 R: 04**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 29, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 7, 2008. The claimant participated in the hearing. Lea Peters, Human Resources Generalist, participated in the hearing on behalf of the employer.

**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 March 21, 1994 to January 2, 2008. On December 31, 2007, the claimant and her husband, who also drove for the employer, pulled into the Phoenix terminal and during a routine inspection of the truck a service manager found an inverter unit plugged into the cigarette lighter to convert 400 watts of DC power to AC power. Converter units are used to run various items including televisions, radios, cell phones, CD players, refrigerators, computers and other electrical devices. The employer's policy prohibits the use of inverters because they are a safety violation and a fire hazard. Electrical items that are specifically made to be plugged into the cigarette lighter without an inverter or adapter are allowed. The policy is contained in the handbook, which the claimant said she did not read since she first received it, was posted at all terminals and was also reiterated by several qualcomm messages including two sent October 31 and December 10, 2007. The October 31, 2007, qualcomm message stated, "Safety: We have had several tractors burn up with inverters in the units. With this in mind and your safety we do not allow any inverters in our unit. If you have an inverter in the tractor you are subject to termination. Do not risk your safety or job. Be sure not to use or have a inverter in our tractors." The December 10, 2007, qualcomm message stated, "Fleet Msg: No inverters. No inverters. This has been and still has been the issue on the safety side. We have had fires that were related to inverters. You are subject to termination for having a inverter in our tractor.

Your own safety from fire issue has to make us all take notice and follow this safety rule. If we get the equipment already setup for plug into the lighter we all can avoid the short cut on this safety issue.” The claimant was driving both days and although the messages went out to all drivers she denies receiving either one. The claimant testified she was not aware of the policy prohibiting the use of inverters and would not have intentionally done anything to jeopardize her job. The claimant felt the handbook policy was unclear when she read it after the termination because the section discussing abuse of the truck and the fact that the use of inverters could result in dismissal was on page four and the section discussing terminable offenses was on page seven. The employer terminated her employment for violating the policy regarding the use of an inverter in her truck.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant denies being aware of the policy prohibiting inverters, it is difficult to believe that she did not receive any of the qualcomm messages sent by the employer. Additionally,

although she complained that the handbook was not clear, she did not read it since her date of hire until after her termination and it specifically prohibited inverters on page four of the policy regarding use and abuse of the truck and stated that violation could result in dismissal, even though it might not have been contained on page seven of the handbook under other terminable offenses. The use of inverters was a safety issue and posed the risk of fire placing the drivers, the equipment and the freight in peril in violation of the employer's policies and procedures. It is unfortunate that the claimant's tenure with this employer ended in this manner. However, it was her responsibility to be aware of the rules and she either chose not to read the handbook or read it and chose to violate the employer's policy over a long period of time and the employer terminated her employment once it learned she was using an inverter. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### **DECISION:**

The January 29, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount,

provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,041.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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