IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DARYL W MOYER
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL NO. 09A-UI-01121-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/23/08 R: 12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Daryl W. Moyer (claimant) appealed a representative's January 21, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Heartland Express, Inc. of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2009. 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 there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 11, 2007. He worked full time as an over-the-road truck driver in the employer's trucking business. His last day of work was November 19, 2008. On that date, the claimant was summoned to the employer's terminal in Columbus, Ohio; he was given the choice to either quit or be fired, so the claimant signed the voluntary quit paperwork. The reason the claimant was given these choices was that the employer had concluded he had excessive service issues.

The claimant had some issues with timely departures or deliveries prior to January 2008; he was given a verbal reprimand on January 23, 2008. The employer asserted that there had been additional verbal warnings given to the claimant after that date, but the claimant denied he had been given any additional warnings, and the employer failed to present any clear evidence that in fact there had been additional warnings.

The final incident that led to the ultimatum being given to the claimant was a delivery on November 18, 2008. The claimant had arrived near the delivery site the prior evening and had

parked at a truck stop. The following morning he arose a bit later than he had planned, between 8:00 a.m. and 9:00 a.m., and checked the employer's Qualcomm communications system for delivery information. The system indicated that the delivery needed to be made by 1:00 p.m. (read on the system as 13:00 military time). Although he had ample time to have made the delivery by 11:00 a.m. had that been the instruction, as the system indicated the delivery time as by 1:00 p.m., the claimant did not rush, but left the truck stop at approximately 10:28 a.m. The delivery was complete and the claimant departed from the delivery site by 11:27 a.m. The employer asserted that the actual delivery time window was between 9:00 a.m. and 11:00 a.m. However, the employer has failed to present any clear evidence that the Qualcomm message to the claimant stated the delivery time as by 11:00 a.m. as compared to 1:00 p.m.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; he did not have the option to continue his employment; he could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but 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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 that 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 that 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 the employer effectively discharged the claimant was the conclusion he had made an additional late delivery after prior warning. The employer has not established that the claimant either had additional warnings after the verbal counseling January 23, 2008, or that he in fact made a late delivery on November 18. 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 January 21, 2009 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did effectively 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/kjw