

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREGORY J HAWORTH**  
Claimant

**APPEAL NO. 09A-UI-06430-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 03/22/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Heartland Express, Inc. of Iowa (Heartland) filed an appeal from a representative's decision dated April 13, 2009, reference 01, which held that no disqualification would be imposed regarding Gregory Haworth's separation from employment. After due notice was issued, a hearing was held by telephone on May 21, 2009. Mr. Haworth participated personally. The employer participated by David Delmasso, Human Resources Representative, and Lloyd Slusser, Terminal Manager.

**ISSUE:**

At issue in this matter is whether Mr. Haworth 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. Haworth was employed by Heartland from August 22, 2007 until March 23, 2009 as an over-the-road driver. He was discharged after his third late delivery.

Mr. Haworth was over one hour late delivering a load in Indiana on January 18, 2009. He left home too late to make his designated delivery time. On February 17, a load had to be given to a different driver because Mr. Haworth ran out of hours. He went home without authorization and, therefore, did not have sufficient hours remaining in which to deliver the load timely. Mr. Haworth again had a late delivery on or about March 23. He left home late and did not have enough time to make the delivery timely. He experienced problems with his vehicle while on the road. He would not have made his delivery time even if he had not encountered mechanical problems. As a result of this final incident, he was discharged on March 23, 2009.

Mr. Haworth filed a claim for job insurance benefits effective March 22, 2009. He has received a total of \$1,870.00 in benefits since filing the claim.

## **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). For reasons that follow, it is concluded that the employer has satisfied its burden of proof. As a truck driver, it was Mr. Haworth's responsibility to make sure loads were delivered timely. This meant leaving home in sufficient time to deliver product as scheduled. Mr. Haworth's tardiness was not due to unforeseen circumstances but to the fact that he did not leave home in sufficient time.

The administrative law judge appreciates that there were mechanical problems on March 23. However, the load would not have been delivered timely even if there had been no such problems. Mr. Haworth's failure to leave home in sufficient time to make timely deliveries had the potential of adversely affecting the employer's customer relations. The three occasions of tardiness identified herein occurred over a period of approximately three months. For the reasons stated herein, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Haworth has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

## **DECISION:**

The representative's decision dated April 13, 2009, reference 01, is hereby reversed. Mr. Haworth was discharged for misconduct in connection with his employment with Heartland. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Haworth will be required to repay benefits.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/css