

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JAMES W BABIARZ
3801 LAKE ST
BURLINGTON WI 53105

HEARTLAND EXPRESS INC OF IOWA
2777 HEARTLAND DR
CORALVILLE IA 52241

Appeal Number: 05A-UI-03728-DWT
OC: 03/13/05 R: 12
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

James W. Babiarz (claimant) appealed a representative's April 5, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Heartland Express Inc. of Iowa (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2005. The claimant participated in the hearing. Lea Kahrs, the human resource representative, 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.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Is the claimant able to and available for work as of March 13, 2005?

FINDINGS OF FACT:

The claimant worked for the employer about seven years. The claimant drove a route from Janesville, Wisconsin to Richville, Ohio, for the last three years of his employment. The claimant had been driving this designated route because the employer accommodated the claimant's medical needs. As a result of the accommodation, the claimant had no problems driving this route for the employer.

When a new dispatcher took over and became the claimant's supervisor, the dispatcher assigned another person to drive this route. The dispatcher assigned the claimant to over-the-road assignments. Even though the claimant informed the dispatcher that for medical reasons he needed a normal run to maintain his blood sugar level, the dispatcher would not accommodate the claimant by keeping him on the route he had driven for three years. When the claimant tried to work as an over-the-road driver, his blood sugar level could not be maintained or regulated and the claimant had to go on insulin. After the claimant went on insulin, he was unable to drive for the employer or any other employer as an over-the-road truck driver.

The claimant went on a medical leave of absence on March 6, 2004. This leave ended May 29, 2004. As of May 29, 2004, the claimant was still on insulin and unable to drive. Since the claimant was unable to drive, the employer considered the claimant to have quit his employment.

The claimant established a claim for unemployment insurance benefits during the week of March 13, 2005. The claimant still cannot work as an over-the-road driver. The claimant can, however, drive locally. The claimant applied to become a postal worker and has been placed on a waiting list to work for the U.S. Postal Office. The claimant is looking for work he is qualified to do.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence indicates the claimant did not want to quit his employment. The claimant tried to maintain his employment by taking a leave of absence in early March 2004. When the leave ended, the claimant was unable to return to work. When the claimant was unable to return to work, the employer terminated the employment relationship. For unemployment insurance purposes, the employer discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job

Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Realistically, the employer had no choice but to end the claimant's employment when he was unable to work as a driver. Prior to the separation, the claimant tried to maintain his employment by trying to work as an over-the-road driver. Unfortunately, the dispatcher's decision to assign the claimant to drive all over the United States aggravated the claimant's medical condition to the point he was unable to drive the route the employer assigned to him. Being unable to perform a job does not amount to work-connected misconduct. Therefore, as of March 13, 2005, the claimant is qualified to receive unemployment insurance benefits.

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code §96.4-3. Even though the claimant is unable to work as an over-the-road truck driver, the law does not require him to be capable of performing a previous job to be eligible to receive unemployment insurance benefits. The claimant demonstrated he is able to other types of work that would give him substantial employment. The claimant is not limiting his job search to a tailor-made job. The claimant established that he is able to and available for work as of March 13, 2005.

DECISION:

The representative's April 5, 2005 decision (reference 01) is reversed. The claimant did not quit his employment. Instead, the employer terminated the employment relationship after May 29, 2004, because the claimant was unable to return to work for medical reasons. As of March 13, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. The claimant demonstrated that he is able to and available for work as of March 13, 2005.

dlw/kjf