

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEORGE O CONRAD
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL 16A-UI-09710-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/07/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 25, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 23, 2016. The claimant George Conrad participated and testified. Witness Karen Conrad also testified on behalf of the claimant. The employer Heartland Express Inc. of Iowa participated through Human Resource Generalist Lea Peters.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an over the road driver from January 4, 2013, until this employment ended on August 11, 2016, when he was discharged.

The claimant and Karen Conrad were both employed by the employer and worked as a driving team. The employer has a policy in place that requires each driver to log into the system while they are driving. If drivers work in a team one driver cannot be driving if the other driver is logged in. This policy is in place to comply with Federal Department of Transportation (DOT) regulations regarding hours of service and logging. The employer and DOT require an 11 hour rest period once a driver has driven ten hours in a 24-hour period. Failure to properly log and report hours or going over the allowable hours is a violation of the employer's policies and federal law.

On July 15, 2016, Karen Conrad was deposed as part of an unrelated legal proceeding. During her deposition she testified there had been incidents where she was logged into the employer's system as the driver, but claimant was actually driving the truck. She testified 90% of the time she and claimant were not following federal regulations. The employer eventually learned about

this testimony from its attorneys. Upon receiving this information Director of Safety Don McLaughlin spoke to claimant about what his wife had testified to. This discussion occurred on August 6, 2016. Claimant admitted what Karen Conrad testified to was true, that he had been driving under her name, and that he had sometimes violated the allowable hours of service. Claimant testified he knew his actions violated both the employer's policies and DOT regulations. Claimant was terminated on August 11, 2016.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not

disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. The employer is charged under both federal and state law with protecting the safety of its employees and the general public by ensuring employees follow safety laws while operating a company vehicle. Claimant admitted to driving hours that were logged under his wife's name. Claimant knew this was a violation of the employer's policies and federal law. The regulations in question were put in place to protect both employees and members of the general motoring public. While there were no serious incidents that resulted in claimant's violations of these regulations, disregarding them was a serious safety risk. The employer has presented substantial and credible evidence that by disregarding the rules involving service hours and logging claimant was acting against the best interests of the employer and the safety of the general public. Benefits are denied.

DECISION:

The August 25, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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