

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID W FORSYTH

Claimant

APPEAL NO. 13A-UI-12844-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 09/29/13

Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, Heartland Express, filed an appeal from a decision dated November 12, 2013, reference 01. The decision allowed benefits to the claimant, David Forsyth. After due notice was issued a hearing was held by telephone conference call on December 10, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Representative Ranae Myers and Operations Manager Jay Courtney.

ISSUES:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

David Forsyth was employed by Heartland Express from March 8, 2013 until September 27, 2013 as a full-time over the road truck driver. On April 8, 2013, he received a written warning for a later delivery of a load. The warning notified him his job was in jeopardy if there were any further incidents.

He was scheduled to deliver a load to a customer in Georgia at a specific time on September 26, 2013. Drivers are not to work more than 14 hours in a day and then must take a ten-hour break. The break can begin effective with the time a driver arrives at a shipper's facility. Mr. Forsyth could have started his ten-hour break when he arrived at 10:00 p.m. but did not do so because he hoped to be able to leave right away and drive to Georgia, then begin his break when he arrived at the delivery point.

The load was not completed until after midnight by which time he had to start his break. The customer notified Heartland Express on September 26, 2013, the load was two to three hours late. Several attempts were made to contact Mr. Forsyth without success until he finally

returned one call from Fleet Manager Paul Winger. He said he had been sleeping and that was why he was late with the delivery. The delivery was rescheduled for the next day and Mr. Forsyth was discharged by Jay Courtney by phone afterward.

David Forsyth has received unemployment benefits since filing a claim with an effective date of September 29, 2013. The employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised his job was in jeopardy as a result of his failure to deliver loads on time. He is responsible for scheduling his required breaks but on the final incident, he did not begin the break until after the loading was done after midnight, instead of when he first arrived. As a consequence he was not able to leave the shipper until a time so late he could not make the delivery time as required.

This is not an isolated incident but the second time a delivery was late in six months. The claimant had control over when he took his break and it was his responsibility to do so in a manner which would enable him to perform his delivery as required. His late delivery could have resulted in loss of revenue or fines to the employer, or loss of the customer. This is conduct not in the best interests of the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision of November 12, 2013, reference 01, is reversed. David Forsyth is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$3,672.00. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs