

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREGORY BADGER**  
Claimant

**APPEAL NO. 09A-UI-01481-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 01/04/09 R: 12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Gregory Badger (claimant) appealed a representative's January 28, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Heartland Express Inc of Iowa (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 18, 2009. The claimant participated personally. The employer participated by Lea Peters, Human Resources Generalist. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 30, 2005, as a full-time over the road truck driver. The claimant signed for receipt of the employer's handbook on December 28, 2005. The employer issued the claimant no warnings during his employment. He had an excellent driving record.

The employer has a no inverter policy. It does allow drivers to use cellular telephone chargers. The claimant took his truck through safety and service lanes at least twice per month for two years. He had a cellular telephone attached to a charger that was inserted into his cigarette lighter. The claimant thought this was an inverter. In February 2008, he asked an employee working in the safety lane if that inverter were allowed. The worker said it was fine.

On September 30, 2008, the claimant had an accident and broke his shoulder. While he was in the hospital, the employer found the cellular telephone charger in the claimant's truck. The terminal manager said it was an inverter. The claimant admitted having an inverter, thinking a charger was an inverter. The employer terminated the claimant on October 6, 2008, for violating its no inverter policy.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present the testimony of the person who saw the charger but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide

sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's January 28, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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