

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID FRENCH
Claimant

APPEAL NO: 06O-UI-08731-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 04/23/06 R: 12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David French (claimant) appealed an unemployment insurance decision dated June 12, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Heartland Express of Iowa (employer) for work-related misconduct. Administrative Law Judge Scheetz was scheduled to conduct an initial hearing in this matter in appeal number 06A-UI-06542-S2T on July 17, 2006. Immediately prior to the hearing, the claimant provided a telephone number for the hearing. The Administrative Law Judge telephoned the number within two minutes. The woman who answered the telephone searched for the claimant but could not find him. Administrative Law Judge Scheetz issued a decision on the record affirming the fact-finding decision. The claimant appealed the decision indicating he did not participate due to being homeless and having difficulty contacting the Administrative Law Judge. The Employment Appeal Board remanded for a new hearing in an order dated August 29, 2006. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2006. The claimant participated in the hearing until it was time for his cross-examination and disconnected. The Administrative Law Judge called the claimant again and he said the hearing was over because he could not afford to stay on the line any longer. The employer participated through Lea Kahrs, Human Resources Generalist. 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.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from July 13, 2005 through April 24, 2006 when he was discharged. He had received a warning on March 31, 2006 for falsifying logs and was advised he would be terminated if he did it again. On April 22, 2006, the claimant was in Charleston, South Carolina and called the dispatcher

demanding to get back to the Atlanta area. The dispatcher attempted to find him a load during which the claimant called repeatedly issuing ultimatums to the dispatcher. Finally the dispatcher found the claimant a load to take to Atlanta, but he refused it and drove the empty truck to Atlanta without authorization. He secured the truck in the Atlanta terminal and left for the weekend. When he returned on Monday, the employer reviewed his logs and saw that the claimant had again falsified those logs. He was discharged for unauthorized use of company equipment and repeatedly falsifying his logbook.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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).

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 claimant was discharged for repeatedly falsifying company logs and unauthorized use of company property. He had been previously warned and knew that his job was in jeopardy if he falsified his daily logs again but did so anyway. And although the claimant denies he was in South Carolina and claims he was in Georgia instead, he does admit that he took the employer's tractor-trailer without authorization. The claimant's actions were a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated June 12, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/cs