

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAYTON S RUSSELL
Claimant

APPEAL NO. 10A-UI-09566-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 11/01/09
Claimant: Respondent (4)

871 IAC 23.43(9)a – Relief of Charges on Combined Wage Claim

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa filed a timely appeal from an unemployment insurance decision dated June 25, 2010, reference 01, that stated that it would not be relieved of charges for benefits paid to Clayton S. Russell through the state of Ohio. After due notice was issued, a telephone hearing was held August 17, 2010 with Human Resources Generalist, Lea Peters, participating for the employer. Although Mr. Russell had provided a phone number at which he could be contacted, there was no answer at that number when called at the time of the hearing. There was no contact from the claimant thereafter.

ISSUE:

Can the employer be relieved of charges?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Clayton S. Russell was employed as an over-the-road truck driver by Heartland Express, Inc. of Iowa from September 10, 2008 until he was discharged October 31, 2009. The final incident leading to the discharge occurred on October 29, 2009 when Mr. Russell was involved in an accident while changing lanes. Mr. Russell hit another vehicle. Heartland Express paid out over \$1,000.00 in damage as a result of the accident. On October 20, 2009, Mr. Russell had received a warning and suspension because of two safety violations from the Department of Transportation. He was discharged as a result of these events.

REASONING AND CONCLUSIONS OF LAW:

In a combined wage claim such as the one that Mr. Russell has filed through the state of Ohio, an Iowa employer may be relieved of charges if the separation from employment was under circumstances that would relieve it of charges on an Iowa claim. See 871 IAC 23.43(9)a. An Iowa employer is relieved of charges if an individual is discharged for misconduct in connection with the individual's employment.

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 evidence in this record establishes that Mr. Russell was discharged because of two safety violations and a preventable accident occurring within the space of nine days. As noted above, the claimant did not participate in the hearing. There being no evidence of mitigating circumstances, the administrative law judge concludes that under Iowa law, Heartland Express would not have been charged for benefits.

DECISION:

The unemployment insurance decision dated June 25, 2010, reference 01, is modified. The employer shall not be charged with benefits paid through the state of Ohio to the claimant. This decision has no effect on the claimant's eligibility for benefits in Ohio.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs