

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DWIGHT D VARNEY
877 HIGBEE DR S
COLUMBUS OH 43207-4259

HEARTLAND EXPRESS INC OF IOWA
2777 HEARTLAND DR
CORALVILLE IA 52241

Appeal Number: 06A-UI-04684-CT
OC: 04/09/06 R: 12
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (Heartland) filed an appeal from a representative's decision dated May 1, 2006, reference 01, which held that no disqualification would be imposed regarding Dwight Varney's separation from employment. After due notice was issued, a hearing was held by telephone on May 17, 2006. The employer participated by Lea Kahrs, Human Resources Generalist. Mr. Varney responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Varney began working for Heartland as an over-the-road driver on August 27, 2003. He was discharged on March 29, 2006, because of service issues. On August 8, 2005, Mr. Varney was late delivering a load because he left home late. On February 27, 2006, Mr. Varney was scheduled to take a load but his wife called to report that he could not work because he was in pain from having teeth pulled. On March 8, 2006, Mr. Varney had a meeting with his terminal manager in which he was given a written warning. He was advised that he would be discharged if there were any further service issues or late deliveries.

On March 20 and March 21, Mr. Varney was unable to take loads arranged for him. On March 20, he indicated he had used eye drops that prevented him from driving. On March 21, he indicated he had to take his daughter to the doctor. The decision to discharge was based on the fact that he had another late delivery on March 27. Mr. Varney was over one hour late making his delivery because he did not leave home in time. The delayed delivery resulted in Heartland having to talk with the customer's corporate office in order to save the account. Mr. Varney was notified of his discharge on March 29, 2006.

Mr. Varney has received a total of \$1,348.00 in job insurance benefits since filing his claim effective April 9, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Varney was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Varney was discharged because of service issues. There were occasions when he was unable to work after having committed to taking loads. However, he had good cause for his refusals. He was in pain after dental work on one occasion and had used eye drops that prevented him from driving on another occasion. Also, he had to take a child to a doctor's appointment on a third occasion. For the above reasons, the administrative law judge concludes that Mr. Varney's absences from scheduled work were excused absences.

The other part of the reason for Mr. Varney's discharge was late deliveries. He had one late delivery in August of 2005. He was warned on March 8 that he would be terminated if he had another late delivery, which he did on March 27. This amounts to two late deliveries during a period of approximately six months. Reporting to work at a fixed location on two occasions during six months might not be excessive. However, Mr. Varney's job was to make deliveries on behalf of his employer. Making on-time deliveries is the essence of the employer's business. If Heartland cannot make deliveries on time as expected by customers, the customers may well opt to go with a different carrier. Given the nature of the employer's business, the administrative law judge considers two late deliveries in six months to be excessive. Moreover, Mr. Varney had been just been warned earlier in the month that he would be discharged if he had another late delivery. In spite of the March 9 warning, he did not leave home in sufficient time to make his delivery timely on March 27.

For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied. Mr. Varney has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 1, 2006, reference 01, is hereby reversed. Mr. Varney was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Varney has been overpaid \$1,348.00 in job insurance benefits.

cfc/kkf