

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEWIS J PURDIE

Claimant

APPEAL NO. 09A-UI-03746-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 02/15/09

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Heartland Express, filed an appeal from a decision dated March 6, 2009, reference 01. The decision allowed benefits to the claimant, Lewis Purdie. After due notice was issued, a hearing was held by telephone conference call on April 2, 2009. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Leah Peters.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Lewis Purdie was employed by Heartland from June 1, 2002 until February 12, 2009 as a full-time over-the-road truck driver. The company policies, which he received, inform employees any "service failure," ie: late deliveries, can result in discipline up to and including discharge.

In December 2008, he was dispatched with a load from FedEx which had a mandatory delivery time. He was delayed due to a storm and notified dispatch of the problem. He was told to contact dispatch when he was able to leave but did not do so. As a result he was four hours late with the delivery and FedEx had not been given any notice. Mr. Purdie was counseled about his failure to communicate.

On February 9, 2009, he was dispatched again on a time-sensitive load for FedEx. His delivery instructions told him he was authorized to use toll roads and to notify dispatch immediately if there were any problems. Mr. Purdie elected to take a road which went 126 miles out of route, heading west in order to make a delivery to the east of the pick up location. There was a road which went directly from the dispatch town to the destination, which he did not take. He did not notify dispatch and the load was three hours late.

Although Heartland did not incur any immediate penalties or fines from FedEx, the delivery failures negatively impacted the overall satisfaction of the client and could have jeopardized future business relations.

Lewis Purdy has received unemployment benefits since filing a claim with an effective date of February 15, 2009.

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 counseled about his late delivery of a time-sensitive load for FedEx in December 2008. In spite of the warning he again was extremely late with his load February 9, 2009. This was because he chose a route which was not the most direct, and actually headed in the opposite direction of the destination for over 126 miles. The claimant could not provide any adequate explanation as to why he did this and the time-sensitive load was very late. When he knew he was going to be late he did not notify dispatch so other arrangements could be made.

The record establishes the claimant acted willfully and deliberately in a manner not in the employer's best interests. He chose a route which he knew was not the most direct and failed to notify Heartland when it became apparent the load would be substantially late. This is a

violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of March 6, 2009, reference 01, is reversed. Lewis Purdie is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount,

provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css