

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN C KESSLER
Claimant

APPEAL NO. 07A-UI-10070-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 10/07/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Steven Kessler filed an appeal from a representative's decision dated October 26, 2007, reference 01, which denied benefits based upon his separation from Heartland Express Inc. After due notice was issued, a telephone conference hearing was conducted on November 15, 2007. Mr. Kessler participated personally. The employer participated by Ms. Leah Peters.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from July 19, 2006, until October 9, 2007, when he was discharged from employment. Mr. Kessler held the position of full-time over-the-road tractor trailer driver and was paid by the mile. The claimant was discharged after he was involved in what the employer reasonably considered to be a "preventable" accident on October 5, 2007, in Chicago, Illinois. On that date, the claimant was operating a company tractor trailer unit and substantially damaged the trailer by striking the top of an overpass that did not allow sufficient clearance. The height of the overpass was clearly marked on a road sign located ahead of the underpass. Mr. Kessler, who was following two other trucks that had sufficient clearance, saw the sign but did not react before striking the overpass. Substantial damage to the company trailer was sustained, requiring the trailer to be left in Chicago, Illinois, for repairs.

Company drivers are subject to discharge for preventable accidents. Mr. Kessler was aware of the company policy. It is the claimant's position that he did not intentionally strike the overpass.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is whether the evidence establishes that the claimant was discharged under disqualifying conditions. It does.

The evidence in the record establishes that company drivers are subject to discharge if they damage company equipment or the property of others due to what the employer reasonably considers to be a preventable accident. In the case at hand, Mr. Kessler drove under an overpass with insufficient height to clear the trailer on the unit that he was operating. The evidence establishes that the height of overpass was clearly marked on a road sign located prior to entry under the overpass; however, the claimant did not ensure that the unit that he was driving had sufficient height to clear the 13-foot maximum clearance.

While there is no doubt that Mr. Kessler did not intentionally cause the mishap, the administrative law judge concludes, based upon the evidence in the record, that the claimant's negligence or carelessness was of such a degree so as to manifest culpability under the provisions of the Iowa Employment Security Act.

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.

For the reasons stated herein, the administrative law judge finds that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated October 26, 2007, reference 01, is hereby affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant had worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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