

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLARENCE WOOD**

Claimant

**APPEAL NO: 10A-UI-00652-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 12-20-09**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 11, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 4, 2010. The claimant participated in the hearing. Lea Peters, Human Resources Generalist, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Heartland Express from November 19, 2009 to December 14, 2009. On November 13, 2009, the claimant pulled over on the asphalt shoulder of a four lane highway in McKenzie, Alabama, around 11:00 a.m. to make a phone call to the employer's health insurance carrier because he was told to call in that morning to find out about adding himself and his family to the employer's insurance plan as the open enrollment period was ending. He tried to make the phone call earlier that morning when he was stopped and being loaded but was unable to get through. He did not know it had rained the previous three days as it was sunny the day he was driving through. While he was pulled over on the shoulder he was two to three inches on the grass and the shoulder or edge of the grass gave way and the truck rolled over. The accident caused \$10,700.00 worth of damage to the tractor and trailer. The claimant was injured in the accident and was on workers' compensation until December 14, 2009, so the employer waited until he returned to work to terminate his employment for having two preventable accidents according to the employer. The accident report stated "the shoulder of the road giving away caused the accident" (Employer's Exhibit A). While the employer believed the claimant should have waited until he came upon a truck stop or rest area the claimant testified he did not know when he would find one of those places to stop and he was told to call the insurance department that morning and it was already 11:00 a.m. The claimant had a previous accident December 3, 2008, after he attempted to turn around after missing an exit and was hit by another vehicle. It was deemed to be a preventable

accident and caused \$2,000.00 in damage. The employer's policy states that any accident can be grounds for termination, especially any accident that causes more than \$4,500.00 in damage. The amount of damage on the November 13, 2009, accident and the fact that the employer considered it to be a preventable accident led to the claimant's termination.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the first accident was preventable and the cause can be attributed to the claimant, the second accident is much less clear cut. The claimant had been told to call the insurance department the morning of November 13, 2009, because it was nearing the end of the open enrollment for insurance period, he had not received the paperwork in the mail, and needed to take care of the situation

and was told he had to call before noon that day. He tried calling when his truck was being loaded but could not get through at that time and took the next opportunity he had which was to pull off on the shoulder of a four lane highway. There was no way for him to know that area was extremely wet and with his side tires on the asphalt and two or three inches on the grass the truck rolled. The claimant could not have anticipated that would happen and there is no evidence of intent on the part of the claimant. While the accident did cause a large amount of damage, even the police report attributed the accident to the shoulder of the road giving way, which presumably would not have happened but for the three days of rain the area experienced before the day the claimant pulled over there on a nice, sunny day and this accident could be ascribed to an act of God. Consequently, the administrative law judge must conclude that the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The January 11, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs