

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES S MORRIS**

Claimant

**APPEAL NO. 13A-UI-11401-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 09/08/13**

**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 1, 2013, reference 01, decision that allowed benefits based on a conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on November 4, 2013. Claimant James Morris participated. Dave Dalmasso represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-11402-JTT. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and of the claimant's weekly report to the agency via the agency's Internet website.

**ISSUE:**

Whether Mr. Morris separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: James Morris was employed by Heartland Express Inc. of Iowa as a full-time over-the-road truck driver for more than a decade and last performed work for the employer on May 10, 2013. Mr. Morris has at all relevant times resided in Rhinebeck, New York, a large metropolitan area. Mr. Morris was assigned the employer's terminal in Carlisle, Pennsylvania. Joe Jenkins, Terminal Manager, was Mr. Morris' supervisor. Rhinebeck is about a five-hour drive from Carlisle. After Mr. Morris performed work for the employer on May 10, 2013, he commenced a personal leave of absence due to a diagnosis for chronic anemia and fatigue. Mr. Morris' doctor took him off work. The doctor advised Mr. Morris that he could perform work that did not involve operating a commercial motor vehicle or lifting more than 50 pounds. Mr. Morris made appropriate contact with his immediate supervisor regarding his need to be off work.

On June 21, 2013, the employer's human resources department became involved and deemed Mr. Morris to be on a leave under the Family and Medical Leave Act (FMLA). Mr. Morris' doctor provided appropriate documentation to support Mr. Morris' continued need to be off work. Mr. Morris had used FMLA leave earlier in the year. The employer decided that the new period of leave would expire on July 30, 2013, when Mr. Morris exhausted FMLA leave rights.

At the end of the FMLA leave period, the employer decided to extend the leave another 15 days, to August 23, 2013. When Mr. Morris had still not been released to return to his truck driving duties, the employer contacted Mr. Morris on September 3, 2013 to inquire whether Mr. Morris was able to return to his duties. Mr. Morris told the employer that his doctor had not released him to return to his truck driving duties. Mr. Morris had most recently provided the employer with medical documentation dated August 26, 2013, which indicated that he would need to continue to be off work until further notice. The employer told Mr. Morris that he would be deemed to have separated from the employment and that the employer would mail him a letter regarding his COBRA rights.

At no time did Mr. Morris express an intent to sever the employment. Instead, Mr. Morris hoped to return to the employment as soon as his doctor cleared him to do that.

Mr. Morris established a claim for unemployment insurance benefits that was effective September 8, 2013. Mr. Morris received \$2,856.00 in benefits for the period of September 8, 2013. Mr. Morris has never returned to the employer to offer his services. Prior to establishing his claim for benefits, Mr. Morris commenced his search for new employment that would not involve driving a commercial truck. Since Mr. Morris filed the claim he has made at least two weekly job contacts. Mr. Morris has never been released to return to his trucking driving duties and has never returned to the employer to offer his services upon being released to return to the work.

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

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

This case is similar to another case recently decided by the Iowa Court of Appeals. See Prairie Ridge Addiction Treatment Services vs. Sandra Jackson and Employment Appeal Board, No. 1-874/11-0784 (Filed January 19, 2012). While the Prairie Ridge case has not yet been published, it provides guidance for the administrative law judge to follow in analyzing the

present case. In Prairie Ridge, Ms. Jackson had requested and been approved for a leave of absence after she was injured in an automobile accident. The employment ended when the employer decided to terminate the employment, rather than grant an extension of the leave of absence once the approved leave period had expired. Like the present case, Ms. Jackson had not yet been released to return to work at the time the employer deemed the employment terminated. The Court held that Ms. Jackson had not voluntarily quit the employment. The Court further held that since Ms. Jackson had not voluntarily quit, she was not obligated to return to the employer and offer her services in order to be eligible for unemployment insurance benefits.

Under the ruling in Prairie Ridge, the administrative law judge concludes that Mr. Morris was discharged from the employment effective September 3, 2013, when the employer elected to end the employment, rather than extend the leave of absence until he could be released to return to the 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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that the discharge was not based on any misconduct on the part of Mr. Morris. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Morris was discharged for no disqualifying reason. Accordingly, Mr. Morris is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

**DECISION:**

The agency representative’s October 1, 2013, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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