

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER L MILLER
Claimant

APPEAL NO. 09A-UI-01647-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 11-16-08
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 27, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 17, 2009. The claimant did participate. The employer did participate through Dave Dalmasso, Human Resources Representative and Cliff Chapman, Operations Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver full time beginning August 13, 2003 through November 14, 2008 when he was discharged.

The claimant was discharged for making late deliveries and pick ups and for failing to keep in communication with the dispatcher. The claimant worked for years with on time deliveries and pick ups and was able to complete his job duties to the satisfaction of the employer and was able to demonstrate an ability to perform the job tasks.

On September 22, 2008 the claimant left his home late so he was late making the delivery. He did not contact the dispatcher or anyone else at the employer so that they could call the customer and alert them that the delivery would be late. The load was delivered two hours late and the claimant was told that he needed to meet the delivery and pick up time expectations.

On October 8, 2008 the claimant overslept and was late picking up a load for delivery. Again he did not contact anyone at the employer to tell them he would be late making the pick up. When confronted by the employer about why he picked up the load late, the claimant told them he had overslept.

On October 30 the claimant mismanaged his time and did not take his full ten-hour break when he was to so that he could legally drive under the Department of Transportation Regulations. When the employer learned that the claimant was driving outside the DOT regulations they immediately had him stop driving so that he would not be in violation of the regulations. The claimant's load was delivered late because he did not manage his time properly. The claimant was given enough time to take his full break and to deliver the load on time, had he followed the break practices enforced by the employer.

On November 1, 2008 as a result of the previous late deliveries and out of regulation driving the claimant was given a final written warning that put him on notice that any late deliveries in the future could lead to his discharge. The claimant signed the notice on November 1, 2008.

On November 12, 2008 the claimant was to pick up a load. The employer has the ability to track the driver's locations as they drive and they determined that the claimant would not be able to make the delivery pick up on time. The claimant took a twelve-hour rest break instead of the ten-hour break allowed and overslept and was late leaving to pick up the load. When he left late he again did not notify the employer that he would be late picking up the load, the employer learned that he would be late by checking on his location as he was driving. Another driver was assigned to pick up the load and the claimant was sent on another pick up instead. The claimant did not communicate with the employer as he had been told to do so when he was late. The employer stands to lose customers if the loads are picked up and delivered late.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 a demonstrated ability to both deliver and pick up loads on time. While he may have had unfortunate personal issues that bothered him, he had been put on notice that he needed to be on time. The claimant had repeated warnings about late pick ups and deliveries and knew that he would be discharged if he continued to be late. The claimant was late due to his own mismanagement of his time and his repeated late deliveries and pick-ups could have cost the employer business. Under these circumstances the employer has established sufficient job connected misconduct to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The January 27, 2009, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs