

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GARY C BOURQUE

Claimant

HEARTLAND EXPRESS INC OF IOWA

Employer

APPEAL NO. 14A-UI-11317-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/05/14

Claimant: Respondent (2)

Iowa Code § 96.5-1 – Voluntary Quit

Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed an unemployment insurance decision dated October 24, 2014 (reference 01) which held that Gary Bourque (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2014. The claimant participated in the hearing. The employer participated through Dave Dalmasso, Human Resources Representative, and Dan Klinzman, Fleet Supervisor.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment, and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time tractor trailer driver from April 23, 2014 through August 22, 2014 when he voluntarily quit because the employer was garnishing his paycheck to cover a traffic ticket. On July 7, 2014 the claimant took Route 4 in Vermont, which requires a permit on loads over 68 feet long. His load was 73 feet long but he did not have a permit and a police officer issued a traffic citation in the amount of \$392.00. Although the claimant's actions resulted in the traffic citation, the ticket was addressed and sent to the employer, who is the responsible party.

The claimant denies responsibility and contends that the ticket is the employer's fault. However, he chose the route and even though the route was marked that permits are required, he did not stop to obtain one from the employer when he could have done so. The employer pays its drivers to take the most direct routes but does not dictate the specific roads they should take.

The claimant filed a claim for unemployment insurance benefits effective October 5, 2014 and has received benefits after the separation from employment in the amount of \$1956. Human Resources Representative Renee Myers participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit his employment on August 22, 2014 because the employer was garnishing his wages to cover his traffic citation. While the ticket was sent to the employer and was in the employer's name, it was issued as a result of the claimant's actions.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$1956 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated October 24, 2014 (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1956.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

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