

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DELASAMIE T BRANTLEY**  
Claimant

**APPEAL NO. 12A-UI-15100-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 11/18/12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Heartland Express Inc. of Iowa filed a timely appeal from a representative's decision dated December 19, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 28, 2013. Claimant participated. The employer participated by Mr. Dave Dalmasso, Human Resource Representative.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: The claimant was employed by Heartland Express Inc. of Iowa from February 16, 2011 until November 14, 2012 when he was discharged from employment. Mr. Brantley worked as a full-time over-the-road tractor trailer driver and was paid by the mile.

Mr. Brantley was discharged based upon a service failure that had taken place on November 12, 2012. Mr. Brantley had received an instant communication message for a delivery to be made on November 12, 2012 at a familiar location in North Carolina. Although the delivery time had been stated in "military time," Mr. Brantley mistakenly concluded that the delivery was to be made at 5:00 p.m., the time that he had always made deliveries at the facility instead of 5:00 a.m., the time that the load was to be delivered to the facility that day.

It appears that the claimant's dispatcher called him at about 3:00 a.m. on November 12, 2012 to remind the claimant of the morning delivery, because it was an unusual delivery time for the facility. The claimant's dispatcher was correct in concluding that Mr. Brantley may have mistaken the delivery time. Mr. Brantley immediately responded to the call leaving immediately to deliver the load. The load was delivered that day but one hour late.

In the past Mr. Brantley had received two warnings for service failures. On one occasion the claimant had not left home in sufficient time to make delivery. On the other occasion the claimant was prevented by circumstances beyond his control for making a timely delivery.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 establishing job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial" When based upon carelessness the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

The evidence in the record does not establish that Mr. Brantley made the delivery on November 12, 2012 late because of wrongful intent. The evidence establishes that the claimant mistakenly believed the delivery time was to be 5:00 p.m. that day, the time that he had always delivered loads to that facility in the past. As soon as the claimant was reminded of the proper delivery time, Mr. Brantley immediately set forth to attempt to make delivery timely but nonetheless was one hour late.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant was not discharged for intentional disqualifying misconduct. The final incident was a careless mistake and the claimant attempted to rectify it as soon as possible. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated December 19, 2012, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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