

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ANTHONY CARTER
122 ROCKSHIRE RD
INDIANAPOLIS IN 46241**

**HEARTLAND EXPRESS INC OF IOWA
2777 HEARTLAND DR
CORALVILLE IA 52241**

**Appeal Number: 04A-UI-04592-CT
OC: 03/28/04 R: 12
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Anthony Carter filed an appeal from a representative's decision dated April 13, 2004, reference 01, which denied benefits based on his separation from Heartland Express, Inc. of Iowa (Heartland). After due notice was issued, a hearing was held by telephone on May 17, 2004. Mr. Carter participated personally. The employer participated by Lea Kahrs, Human Resources Generalist.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Carter was employed by Heartland from November 7, 2001 until March 15, 2004 as an over-the-road truck driver. He was under dispatch on March 13 when he was arrested for driving under the influence of alcohol (DUI) in his personal vehicle in Indianapolis, Indiana. He was to deliver a load in Iowa by approximately 7:30 a.m. on March 15.

Mr. Carter was released from jail the evening of March 14. He then spent several hours getting his car out of impound. The officials on duty at the police impound lot would not allow him to drive his vehicle because they felt he smelled of alcohol. He was done with arrangements for his vehicle by approximately 9:00 or 10:00 p.m. the evening of March 14. Neither Mr. Carter nor anyone acting on his behalf notified the employer that there might be a problem making timely delivery of his load. He was approximately six hours away from his delivery location when he was in Indianapolis. He did not attempt to make the delivery and did not contact the dispatcher to see if the delivery time could be rescheduled. Mr. Carter did not contact Heartland until approximately 8:00 a.m. on March 15. He was discharged by the terminal manager at that time.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Carter was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Carter was discharged because he failed to deliver a load on time and failed to notify the employer that he would be unable to deliver his load timely. In the transportation industry, unannounced delays in making deliveries has the potential of costing the employer money in lost business.

Mr. Carter was out of jail by 6:00 p.m. on March 14 and could have started on his route to Iowa at that time. Given his estimate that he was only six hours away from where he was to make his delivery, it seems possible that he could have made his delivery time even if he waited until he was done getting his car out of impound at 10:00 p.m. At the very minimum, he could have given the employer some notice that there was a problem instead of waiting until after the scheduled delivery time to make contact. Moreover, it was Mr. Carter's own conduct, drinking and driving, which made him unable to meet his obligation to the employer. Although his failures on this occasion constituted an isolated instance of such conduct on Mr. Carter's part, the administrative law judge considers it a substantial disregard of the standards the employer had the right to expect. It was contrary to the employer's interests and constituted misconduct within the meaning of the law. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 13, 2004, reference 01, is hereby affirmed. Mr. Carter was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf