

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE G TOPPIN**

Claimant

**APPEAL NO. 12A-UI-04099-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 03/11/12**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Wayne Toppin filed a timely appeal from the April 5, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 3, 2012. Mr. Toppin participated. Lea Peters represented the employer and presented additional testimony through Matt Lynch.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Wayne Toppin was employed by Heartland Express, Inc. of Iowa as a full-time over-the-road truck driver from 2009 until March 9, 2012, when Matt Lynch, Fleet Manager, discharged him for exceeding the maximum daily driving hours. Federal Motor Carrier Safety Regulations (FMCSR) limited Mr. Toppin to operating a tractor-trailer no more than 11 hours per 24-hour cycle. The employer's safety policies obligated Mr. Toppin to adhere to that limit. Mr. Toppin was aware of the employer's work rules and the FMCSR limit. On March 9, Mr. Toppin knowingly and intentionally exceeded the driving hour limit by one and a half to two hours so that he could attend his son's awards event. Mr. Toppin disregarded multiple warnings that the employer's automated drive log gave him beginning at one hour before he reached his daily driving limit. Mr. Topping knew that by exceeding the daily driving limit he was exposing the employer and himself to increased risk of liability in the event he was involved in an accident while exceeding the driving limit.

The final incident followed a couple instances in February 2012 wherein Mr. Toppin made a couple of log errors, one by driving too far while logged out and another by leaving himself in on-duty status while on a break.

## REASONING AND CONCLUSIONS OF LAW:

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 Mr. Toppin willfully disregarded FMCSR regulations and the employer's safety policy on March 9, 2012, when he decided to ignore driving time limit warnings and to exceed daily driving time limits. Mr. Toppin had other options available to him if the goal was to make his son's awards ceremony, so this was not a matter of Mr. Toppin having to choose between his work and his family. In any event, Mr. Toppin knowingly elected to violate not only the employer's policy, but also the law. Mr. Toppin was discharged for misconduct. Accordingly, Mr. Toppin is disqualified for benefits 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 employer's account shall not be charged for benefits paid to Mr. Toppin.

**DECISION:**

The Agency representative's April 5, 2012, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs