

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY M SHANK
Claimant

APPEAL NO. 13A-UI-06169-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 04/28/13
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 May 14, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 2, 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 sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Timothy Shank was employed by Heartland Express Inc. of Iowa as an over-the-road tractor trailer driver from February 27, 2009 until March 8, 2013 when he was suspended and subsequently discharged. Mr. Shank was paid by the mile. His immediate supervisor was his dispatcher.

Mr. Shank was discharged on March 19, 2013 based upon the employer's belief that company rules and policy had been violated by the claimant based upon his arrest in North Carolina on March 8, 2013. On that date Mr. Shank was arrested in a rest area for suspicion of being under the influence of a controlled substance in operation of a commercial vehicle, possession of a controlled substance and possession of a concealed weapon. It had also been reported to the company by North Carolina authorities that Mr. Shank had been "swerving" and had been pulled over and arrested. Based upon the charges pending against Mr. Shank the employer concluded that he had engaged in an out-of-service violation as well as violating company policies, operating impaired, being under the influence of controlled substances and possession of a concealed weapon. Although Mr. Shank had been initially told by the company that no action would be taken until testing results came back, a decision was made to terminate Mr. Shank. The company concluded that the claimant's arrest itself and the charges would have a negative effect on insurability rates for the company. The claimant denied wrongdoing and has pled not guilty to the charges against him.

During the incident in question Mr. Shank changed lanes to provide space to a state patrolman who was on the side of the road. A second trooper who observed Mr. Shank's movements categorized the claimant's movement as "weaving" and detained Mr. Shank in an adjacent rest area. Subsequently, a number of other North Carolina state patrol members arrived. They issued repetitive breath tests to the claimant. Although the tests showed no sign of being under the influence, the troopers then identified aspirin in plain sight in the truck's cab as being a potential controlled substance and arrested Mr. Shank apparently concluding that if the aspirin found was a controlled substance, then Mr. Shank may have been under the influence of a controlled substance.

In conjunction with Mr. Shank's questionable arrest, the "troopers" conducted a full search of the truck, its contents and Mr. Shank's personal luggage and belongings. Securely packed away in the claimant's luggage, in an area that was not immediately accessible to Mr. Shank, the "troopers" found an inoperable unloaded handgun that was properly registered to the claimant. Although the firearm was unloaded and inoperable and securely packed away in an area non-accessible to the claimant, he nonetheless was charged with being in the possession of a concealed weapon.

Mr. Shank has pled not guilty to all charges brought against him during the incident and at the time of hearing the matter has not been adjudicated and the claimant has not been found guilty. Mr. Shank did not believe that possessing a firearm of that nature in a location where it was kept was a violation of company policy. Mr. Shank contends that he believes the rule is not in place, as it is not enforced by the company and many drivers take similar steps for their own protection with the company's knowledge.

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 disqualifying 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge may not necessarily be serious enough to warrant the 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

In this matter the employer made a management decision to terminate Mr. Shank based upon information from North Carolina authorities that the claimant had been charged with a number of offences and serious policy violations which included weaving, out-of-service violations, being under the influence of controlled substance, possession of controlled substance and possession of a concealed weapon. Based upon the employer's conclusion that the claimant was guilty, Mr. Shank was discharged although the employer was aware that Mr. Shank professed his innocence and has pled not guilty to all the charges.

In this matter it is clear that if Mr. Shank is in fact found guilty of the charges against him, the conviction or convictions would establish violations of company rules on the part of Mr. Shank which would justify disqualification from unemployment insurance benefits. This matter, however, has not been resolved by the North Carolina court system at the time of the hearing on this matter. Mr. Shank strenuously professes his innocence and has provided a detailed account of the circumstances that led to the traffic stop, the subsequent conduct of the North Carolina state troopers and his arrest. The fact that charges have been brought against an individual is not, in and of itself proof of guilt. The administrative law judge concludes that if Mr. Shank is found not guilty of the weaving, being under the influence of controlled substance and possession of a controlled substance charges, he has not engaged in misconduct sufficient to warrant the denial of unemployment insurance benefits. However, if the claimant is later adjudicated as guilty of those charges, the employer may request a re-determination by Iowa Workforce as to whether the claimant was separated under disqualifying conditions.

The administrative law judge concludes that the evidence in the record is not sufficient to disqualify the claimant solely on the basis of a rule violation on the part of the claimant regarding the handgun. The evidence establishes that although that rule may be in place it does not appear to be sufficiently enforced in practice. The handgun located by the North Carolina authorities in the search was not only inoperable but packed away in a secured manner in an area that was not quickly accessible by the claimant, in the claimant's luggage. In the absence of a finding of guilt on the part of the claimant for possessing a concealed handgun, the administrative law judge concludes that the evidence does not establish an intentional disregard for the employer's interests or violation of the company's rules sufficient to warrant the disqualification for benefits, at this time.

For the reasons stated herein the administrative law judge concludes that the evidence in the record at the time of hearing is not sufficient to establish disqualifying misconduct on the part of Mr. Shank. However, if the claimant is found guilty of the charges in question, the employer may request a re-determination based upon new evidence that was not previously available.

DECISION:

The representative's decision dated May 14, 2013, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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