

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL E GOLDEN

Claimant

APPEAL NO. 10A-UI-02383-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

Original Claim: 01/10/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated February 5, 2010, reference 01, that held he was discharged for misconduct on January 10, 2010, and that denied benefits. A telephone hearing was held on April 2, 2010. The claimant participated. Dave Dalmasso, HR Representative, and Cliff Chapman, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant began work as a full-time over-the-driver on October 1, 2008, and last worked January 4, 2010. During orientation, the claimant received the employer's policies, including a provision that refusing a dispatched load, absent being out of hours or an unsafe load, is grounds for termination.

On January 4, dispatch directed the claimant for a load to go empty from a Mississippi location to Memphis, Tennessee. The claimant would be paid his regular driver per-mile rate for the load. The claimant refused the load when his request for additional compensation (\$15) for short haul pay was denied. The claimant refused the load for no other reason. Later, the claimant drove his truck to the employer's terminal located at Olive Branch, Mississippi, where the terminal manager concluded the claimant had been trying to hold the employer hostage with his actions. While at the terminal, Operations Supervisor Chapman surmised the claimant was being defiant by driving to the terminal rather than accepting the load, based on the claimant's actions and statements during a telephone conference call with the claimant. The claimant had previous issues with the employer regarding short-haul pay (Heartland Cares pay), and he stood on his refusal to accept the load. Chapman discharged the claimant for his refusal in violation of employer policy.

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 administrative law judge concludes that the employer established misconduct in the discharge of the claimant on January 4, 2010, because the claimant refused a work assignment without good cause.

The claimant was advised during orientation and knew that a job assignment refusal could result in employment termination. According to employer policy, he had no good cause for refusal. Refusing the load for being denied an additional compensation of \$15 is not a good cause, as this was an ongoing issue for the claimant, who had continued in his employment given the employer's application of the short-haul policy rather than quitting his job. In effect, the claimant had accepted it was the employer's discretion whether the short-haul pay was merited.

The employer made a reasonable assumption the claimant was being defiant in refusing the load in seeking the additional compensation by driving his truck to the nearest terminal, though the operations manager gave him an opportunity to do it after the initial dispatch. Repeated failure to follow an employer's instructions in the performance of duties is disqualifying misconduct. Gilliam v. Atlantic Bottling Company, 453 NW2d 230 (Iowa App. 1990).

DECISION:

The decision of the representative dated February 5, 2010, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on January 4, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw