

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

RANDY K HOLT  
2104 –10<sup>TH</sup> ST PL  
CORALVILLE IA 52241

HEARTLAND EXPRESS INC OF IOWA  
2777 HEARTLAND DRIVE  
CORALVILLE IA 52241

Appeal Number: 05A-UI-05130-DT  
OC: 04/24/05 R: 03  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (employer) appealed a representative's May 9, 2005 decision (reference 01) that concluded Randy K. Holt (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2005. The claimant participated in the hearing. Lea Kahrs appeared on the employer's behalf and presented testimony from two other witnesses, Ryan Schlabaugh and Darren Hubler. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 21, 1994. He worked full time as a night dispatcher in the employer's over-the-road trucking business. His last day of work was April 21, 2005. The employer discharged him on April 22, 2005. The reason asserted for the discharge was unprofessional treatment of a driver.

On January 27, 2005, the claimant had gotten into an argument or verbal altercation with a driver in which he had raised his voice and a supervisor had to intervene; he was given a warning that any future such unprofessional interaction with drivers would result in discharge. On April 21, 2005 the claimant was sending satellite communications to a driver who was, according to the employer's GPS, supposedly in Carlisle, Pennsylvania, but he was not at the employer's terminal in that city where another driver was supposed to pick up the first driver's load. The first driver responded to the claimant that the claimant should not be bothering him because he was on his rest time. The claimant was still trying to figure out where the driver was, and so further inquired, and the driver indicated that he was at a truck stop in the same town as the terminal. The claimant asked (via satellite message) the driver to call him on the phone, which the driver did. He asked the driver why he had not gone to the terminal where the second driver was waiting. The driver made some further complaints to the claimant about contacting him, and further responded that he was at the end of his legal driving time. The claimant commented that he felt the driver was being childish and was "acting like a baby." The driver then hung up on the claimant. The claimant had not raised his voice or used any vulgar language during his discussion with the driver. The claimant immediately sent a message to the driver to stay put, that he would have the second driver come to the truck stop to pick up the load, but the first driver ignored the instruction and drove the truck from the truck stop to the terminal, and then made a complaint to the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his interaction with the driver on April 21, 2005 after the prior warning. While it would have been a better use

of discretion had the claimant not said the driver was being "childish" or "acting like a baby," he felt he was within his authority to express his concern to the driver regarding the driver's conduct, and he reasonably did not consider his actions on that day to be the same type of behavior as the verbal altercation which he had on January 27, 2005. Under the circumstances of this case, the claimant's comments to the driver was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 9, 2005 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/pjs