

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CARSON E NAZOR
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL 15A-UI-08387-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 15, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2015. The claimant participated personally. Although properly notified for the hearing, the employer elected not to participate. No documents were offered or admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an over-the-road truck driver and was separated from employment on June 11, 2015, when he was informed he was being discharged for his attitude and too many accidents.

The claimant had two speeding tickets in his employment history; one in 2008 out of Ohio, and one in Michigan in 2014. The claimant attended a yearly safety review meeting, and had received “safe driver” bonuses for five years straight for having no accidents. The claimant reports he had no accidents, DOT reportable accidents or citations during his employment. The claimant reported that just prior to his separation, he had an incident where the employer alleged the claimant pulled out from under his trailer and it fell down, causing \$2000 in damage. The claimant denied pulling out, and disputes the damage, but stated the trailer was “loose.” The claimant also had a disagreement with his dispatcher, Adolph, on his final day of employment about a load in Pennsylvania. The claimant denied having any verbal or written warnings for any reason, including his accident record or attitude.

The employer did not attend the hearing, and did not submit written documentation in lieu of appearance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer did not attend the hearing and did not rebut the claimant's credible denial of accidents or being aware that his job was in jeopardy due to his safety record. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). In contrast, the claimant testified that he had five straight years of

safety bonuses due to his accident free record. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The July 15, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/mak