

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TELLIE W MUZZALL
Claimant

APPEAL NO. 07A-UI-06090-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 05/21/07 R: 12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tellie W. Muzzall (claimant) appealed a representative's June 8, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Heartland Express, Inc. of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 5, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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 December 13, 2004. He worked full time as an over-the-road truck driver. His last day of work was May 22, 2007. The employer discharged him on that date. The employer did not provide the claimant with a reason for the discharge but he later learned that the asserted reason was that he had been late on delivering loads on two occasions.

The two dates in question were April 27 and May 22. On May 22, there had been a load due for delivery that day which was not even assigned to the claimant until after the time for delivery had passed; it was not assigned to him until about 9:43 a.m. (CST) and he delivered it at about 3:43 p.m. (CST), which was a straight through hard drive to the delivery site. On April 27, the claimant was assigned to pick up a load of a chemical but when the assignment was made the claimant only had a few hours left in his allowable hours of service. When he promptly reported to the client to pick up the load, he learned there was not a load ready, that he would need to wait for the load to finish production. By the time the load was ready, the claimant's hours of service for the day had expired and he was required to begin his rest period. After his rest he

did deliver the load, with no complaints being voiced from either party to the shipment. The claimant had not received any disciplinary warnings during his employment.

REASONING AND CONCLUSIONS OF LAW:

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 section 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). The question 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 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 employer did not establish a basis for the discharge. Assuming that the asserted reason was late deliveries, the employer has not established that any of the deliveries were due to improper actions of the claimant. 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 June 8, 2007 decision (reference 01) is reversed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css