

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J CONSALUS
Claimant

APPEAL NO. 11A-UI-01197-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 12/12/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 26, 2011, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Lynnette Consalus. Lea Peters participated in the hearing on behalf of the employer with a witness, Brian Janssen. Exhibits A and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road truck driver from April 2009 to December 16, 2010. The claimant understood when he was hired, that there could be times when he would be required to drive from midnight to 6:00 a.m.

On November 29, 2010, the claimant had an appointment with his doctor. After explaining to the doctor that he had problems sleeping at times, the doctor prescribed a sleep aid medication. The doctor also prepared a letter for the claimant stating: "For medical reasons, avoid driving from midnight to 6:00 a.m." The claimant turned this in to his dispatcher on December 12.

On December 16, 2010, the claimant met with the company supervisor, Brian Janssen. When asked, the claimant admitted to Janssen that he had submitted the doctor's letter. Janssen then told the claimant that the employer could not employ him due to the medical restriction. Janssen had prepared a driver's separation sheet listing the separation reason as a quit, but he changed the separation reason to termination after the claimant objected and said he was not quitting.

The employer discharged the claimant after he submitted the medical statement advising him to avoid driving from midnight to 6:00 a.m.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The claimant did not quit his job, he was discharged by the employer because his doctor recommended that he avoid driving from midnight to 6:00 a.m., which the employer believed could not be easily accommodated.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While the employer may have been justified in discharging the claimant due to his doctor's advice not to drive from midnight to 6:00 a.m., work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated January 26, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css