

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICARDO D FLENNORY
Claimant

APPEAL NO. 14A-UI-00317-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 11/17/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 31, 2013, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged. After due notice was issued, a hearing was held on February 3, 2014. Claimant Ricardo Flenory did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Dave Dalmasso, Human Resources Representative, represented the employer. The administrative law judge took official notice of the agency's record (DBRO) of benefits disbursed to the claimant and of the fact-finding notes that document the employer's participation in the fact-finding interview that led to the lower decision that allowed benefits.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant has been overpaid benefits.

Whether the claimant is required to repay benefits he has received.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ricardo Flenory was employed by Heartland Express Inc. of Iowa as a full-time over-the-road commercial truck driver from May 2013 until November 15, 2013, when Scott Adams, Terminal Manager, discharged him from the employment for keeping a dog or a cat in the cab of the truck in violation of the employer's work rules. Mr. Flenory last performed work for the employer on November 4, 2013 and then began a period of approved time off for personal reasons. At that time, Mr. Flenory turned in his truck. When the employer inspected the truck, the employer found animal hair in the cab. On November 15, 2013, when Mr. Flenory was return to work, the employer asked Ms. Flenory whether he had had a pet in the truck. Ms. Flenory admitted

he had, but also indicated that he was unaware of a policy that would prohibit him from having a pet with him. The employer has a zero-tolerance policy for maintaining pets in its trucks and discharged Mr. Flennory from the employment for keeping the pet.

Mr. Flennory established a claim for benefits that was effective November 17, 2013 and received \$4,080.00 in benefits for the 10-week period of November 17, 2013 through January 25, 2014.

The employer participated in the fact-finding interview through a human resources representative who provided a verbal statement to the Workforce Development Representative. That statement echoes the fact referenced above concerning the claimant's separation from the employment.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not present testimony from anyone with personal knowledge of the incident that triggered the discharge. The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish that Mr. Flennory was indeed aware of the policy that prohibited him from keeping a pet with him in the employer's truck. In the absence of such evidence, the evidence fails to establish a willful violation of the employer's no-pet policy.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Flennory was discharged for no disqualifying reason. Accordingly, Mr. Flennory is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's December 31, 2013, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css