

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J SWANN
Claimant

APPEAL NO. 13A-UI-12089-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 09/08/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Swann filed a timely appeal from the October 21, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 20, 2013. Mr. Swann participated. Dave Dalmasso represented the employer and presented additional testimony through Don McGlaughlin.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Swann was employed by Heartland Express Inc. of Iowa as a full-time over-the-road truck driver from 2009 until August 22, 2013, when Don McGlaughlin, Safety Director, discharged him from the employment for fighting on the job. On August 16, 2013, Mr. Swann was involved in a road rage incident in Georgia while operating the employer's tractor-trailer rig. Another tractor-trailer operator passed in front of Mr. Swann too closely, forcing Mr. Swann to brake to avoid a collision. The incident angered and upset Mr. Swann. The other driver took an upcoming exit and went to a truck stop to refuel his truck. Mr. Swann took the same exit and went to the same truck stop. The other driver was parked at a fuel island when Mr. Swann parked his Heartland Express truck nearby. The truck bore the Heartland Express logo on both the tractor and trailer. Mr. Swann elected to confront the other driver to convey his anger to the other driver. Mr. Swann exited his Heartland Express truck with his tire thumper, a small bat. Mr. Swann walked to the fuel island to confront the other driver, tire thumper in hand. Words were exchanged. Mr. Swann hit the other driver with the weapon he had brought with him. Bystanders and truck stop staff intervened in the fight. Mr. Swann got back in his Heartland Express truck and began to leave the truck stop. Mr. Swann noticed the other driver at the rear of his of Heartland Express truck. Mr. Swann stopped his truck. Law enforcement officers arrived and arrested Mr. Swann for assault. Mr. Swann was taken to jail, where he remained for four days. The other driver was not arrested.

On August 22, 2013, after his release from custody, Mr. Swann went to the employer's terminal in Jacksonville, Florida. The terminal manager contacted Don McGlaughlin, Safety Director. Mr. McGlaughlin questioned Mr. Swann about how he came to be arrested and incarcerated. Mr. Swann told Mr. McGlaughlin about the road rage incident, how he had made his way to the truck stop, how he confronted the other driver, how they got into a heated argument, and how he had struck the other driver. Mr. Swann made no mention of acting in self-defense or of the other driver laying hands on him. Mr. McGlaughlin notified Mr. Swann that he was discharged from the employment.

The employer had provided Mr. Swann with defensive driving training that included how to act, and how not to act, in road rage situations. The employer had a written policy that obligated Mr. Swann to treat others with respect and courtesy while engaged in work on behalf of the employer. The employer concluded that Mr. Swann had to make a series of conscious decisions, adverse to the employer's interest, to get himself into the situation that resulted in his arrest.

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).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record establishes that Mr. Swann engaged in misconduct in connection with the employment by engaging in assaultive behavior while performing work for the employer. Mr. Swann was operating the employer's truck at the time of the road rage incident. Mr. Swann was operating the employer's truck when he decided to confront the other driver and when he decided to take a weapon with him. The weight of the evidence indicates that Mr. Swann assaulted the other driver and was the primary physical aggressor in the fight. The weight of the evidence indicates that Mr. Swann was not acting in self-defense at the time he assaulted the other driver with the weapon he had brought to the scene. All of Mr. Swann's actions in connection with confronting and assaulting the other driver were in wanton disregard of the employer's interests. Anyone at the scene on August 16, 2013 would have associated Mr. Swann with the Heartland Express truck that Mr. Swann had exited immediately before the fight began. Mr. Swann's suggestion that he was off-duty at the time of incident is without merit. There was a clear connection between the conduct and the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Swann was discharged for misconduct. Accordingly, Mr. Swann is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Agency representative's October 21, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs