

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODNEY HODGES**

Claimant

**APPEAL NO. 09A-UI-18157-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 11/01/09**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Rodney Hodges filed an appeal from a representative's decision dated November 24, 2009, reference 01, which denied benefits based on his separation from Heartland Express, Inc. of Iowa (Heartland). After due notice was issued, a hearing was held by telephone on January 13, 2010. Mr. Hodges participated personally and was represented by Jeffrey Flagg, Attorney at Law. The employer participated by Lea Peters, Human Resources Generalist.

**ISSUE:**

At issue in this matter is whether Mr. Hodges was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hodges' last period of employment with Heartland was from June 22, 2007 until November 2, 2009. He worked as an over-the-road driver. He was discharged because of an accident on October 27, 2009, which the employer deemed preventable.

During the late morning of October 27, Mr. Hodges was driving on the interstate highway in Charlottesville, Virginia. He was driving the posted speed limit of 65 miles-per-hour. The weather was clear and the roads were dry. After he cleared a bridge, he noted a vehicle in front of him that appeared to be moving slowly. He did not have room to move to the left lane to avoid the vehicle and decided he would take an off ramp to avoid striking it. The driver in the vehicle applied the brakes as Mr. Hodges was attempting to exit the highway and he struck the vehicle. Law enforcement cited Mr. Hodges for following too closely. He has protested the ticket and the matter is currently pending.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Hodges was discharged solely because of the accident of October 27, 2009. The administrative law judge does not believe he deliberately or intentionally caused the accident. He was, however, negligent in failing to appreciate how slowly the other vehicle was moving so that he could have taken more effective steps to avoid striking it. Negligence constitutes disqualifying misconduct only if it is so recurrent as to manifest a substantial disregard for the employer's interests or standards.

Whether negligent conduct constitutes disqualifying misconduct is measured by the frequency of the negligence, not the amount of damage caused by the negligence. See 871 IAC 24.32(1). Mr. Hodges had not previously been disciplined due to negligent conduct. The accident of October 27 was, therefore, an isolated instance of negligence. One instance of negligence is not sufficient to establish disqualifying misconduct. See Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The fact that Mr. Hodges' accident of October 27 may have been costly to the employer does not alter the fact that it represented an isolated instance of negligence.

The employer had every right to discharge Mr. Hodges. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated November 24, 2009, reference 01, is hereby reversed. Mr. Hodges was discharged by Heartland but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/pjs