

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE C ESPINEL

Claimant

APPEAL NO: 09A-UI-05305-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 03/01/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed a representative's March 25, 2009 decision (reference 01) that concluded George C. Espinel (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 1, 2009. The claimant participated in the hearing. Dave Dalmasso appeared on the employer's behalf and presented testimony from one other witness, Jay Courtney. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, 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 April 25, 2007. He worked full time as driver at the employer's over-the-road trucking business. His last day of work was February 26, 2009. The employer discharged him on February 26, 2009. The stated reason for the discharge was being late on a delivery after prior warnings.

The claimant was reprimanded for a late delivery on November 10, 2008. On February 20 Mr. Courtney, the operations manager, had an extensive discussion with the claimant regarding the need to provide safe, legal, and timely transportation.

On February 20 the claimant picked up a load from the employer's yard in Ft. Smith, Arkansas, about 39 miles from the claimant's home. The intent was that the claimant take the load home over the weekend, but then to deliver it on February 23 to a site in Wilmar, Texas, about 248 miles from the claimant's home. The employer's estimation was that this should take just short of six hours. Dispatch instructions were sent on February 20 to the claimant's truck

terminal; he acknowledged receiving that transmission. The instructions specified the delivery time as 8:00 a.m. on February 23.

The claimant did take the load home as planned on February 20. He after several days of rest, the claimant left his home with the load at 2:00 a.m. on February 23. Taking the maximum estimated travel time, this would have easily gotten the claimant to his delivery site by 8:00 a.m. However, after driving an hour, the claimant stopped at 3:00 a.m. and did not resume driving until about 6:00 a.m. Consequently, he did not deliver the load until 9:49 a.m., approximately two hours late. The claimant's explanation was that he had not adequately reviewed the instructions on the truck terminal and believed the load was not to be delivered until 11:00 a.m., a time he had as a delivery time for similar shipments in the past.

The claimant established a claim for unemployment insurance benefits effective March 1, 2009. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$4,279.00.

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 § 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); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failing to make a delivery as scheduled without a good reason after two prior warnings for proper driving expectations, one of which was for a late delivery, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's March 25, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 26, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css