

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN W ROUSH**  
Claimant

**APPEAL NO. 07A-UI-02063-MT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 01/21/07 R: 12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 21, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 15, 2007. Claimant participated personally and was represented by Kenneth Butters, Attorney at Law. Employer participated by Jay Courtney, Operations Manager, and Lea Kahrs, Human Resource Generalist. Exhibits One and A were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on January 19, 2007.

Claimant was discharged on January 19, 2007 by employer because claimant refused to haul a local 32-mile load. Claimant, a truck driver, did not want the load because it did not pay as good as long-haul loads. Claimant had refused dozens of loads over the term of employment without formal counseling. Claimant had prior warnings on his record for driving insufficient miles during a workweek. Claimant had not been formally warned about refusing loads. Claimant had been counseled for insufficient weekly mileage. The counseling did not place claimant on notice that his job was in jeopardy.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence established that claimant was not discharged for an act of misconduct when claimant violated employer's policy concerning refusing loads. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant did not know his job was in jeopardy as a result of refusing a load. The lack of formal prior warnings weighs heavily against a finding of intentional conduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 21, 2007, reference 01, is reversed. Unemployment insurance benefits shall be allowed, provided claimant is otherwise eligible.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw/pjs