

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A TOWNSEND
Claimant

APPEAL NO. 08A-UI-10461-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 10/05/08 R: 12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (Heartland) filed an appeal from a representative's decision dated October 30, 2008, reference 01, which held that no disqualification would be imposed regarding Michael Townsend's separation from employment. After due notice was issued, a hearing was held by telephone on November 24, 2008. Mr. Townsend participated personally. The employer participated by Lea Peters, Human Resources Generalist. Exhibits One and Two were admitted on the employer's behalf.

The hearing record was left open to receive additional documentation from both parties. The hearing reconvened on November 26, 2008. The same parties again participated in the hearing. Exhibit A was admitted on Mr. Townsend's behalf. Exhibit Three was admitted on the employer's behalf.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Townsend was employed by Heartland from November 24, 2004 until September 23, 2008. He was employed full time as a regional driver. He was discharged because he failed to meet with the employer's attorney in preparation for an arbitration meeting. The binding arbitration was due to a lawsuit that resulted from an accident Mr. Townsend was involved in while driving the employer's vehicle. The arbitration was to be held in Philadelphia, Pennsylvania, and arrangements were made to dispatch Mr. Townsend with a load to that area so that he would be available to meet with the attorney on Sunday, September 21. The arbitration meeting was to be held on September 22.

According to the employer's attorneys, Mr. Townsend was reluctant to attend the arbitration and, at one point, indicated he was thinking of not attending because he was unhappy with his

employment. Mr. Townsend was told on September 19 that he was to meet with the attorney at 12:00 noon on September 21. He dropped his load in New Jersey at 9:58 a.m. (local time) on September 21. At approximately 2:13 p.m., Mr. Townsend spoke to the attorney and the meeting time was changed to 4:30 p.m. He spoke to the attorney at 4:05 p.m. and indicated he was doing laundry and would be there as soon as he could. The meeting time was changed to 6:00 p.m.

Mr. Townsend called the attorney at 7:28 p.m. and indicated he was having trouble finding a place to park his tractor and trailer. He did not contact the attorney again until 10:11 p.m., at which time he was told the attorney would be using his deposition during the arbitration as there had been no time to meet with and prepare him for the arbitration. Mr. Townsend placed a call to his dispatcher at 8:02 p.m. At 9:33 a.m. on September 22, dispatch sent him a message asking if the hearing was over. After the arbitration, the employer was assessed damages in the amount of \$950,000.00. The employer believes its liability was adversely affected by the fact that Mr. Townsend did not appear and testify during the arbitration. As a result of his failure to do so, he was discharged on September 23, 2008.

Mr. Townsend filed a claim for job insurance benefits effective October 5, 2008. He has received a total of \$2,527.00 in benefits since filing the claim.

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. Townsend was discharged because he failed to meet with the employer's attorney to prepare for his appearance at a binding arbitration meeting. He indicated to the employer that he would attend and plans were made to have him in the area. He arrived in the area by 10:00 a.m., which left him eight hours in which to get to the hotel where he was to meet with the attorney at 6:00 p.m.

It was Mr. Townsend's contention that he was driving around looking for a parking space for his rig and, therefore, could not make the 6:00 p.m. meeting time. He had spoken with the attorney at 4:30 p.m. to arrange the 6:00 p.m. meeting time. He did not contact the attorney again until 7:28 p.m. Philadelphia is a major east coast city. The administrative law judge is not inclined to believe it took him three hours to find a place to park in or around Philadelphia. The fact that he did not appear timely is consistent with the attorney's contention that Mr. Townsend was reluctant to testify.

The administrative law judge believes Mr. Townsend had an obligation to act in his employer's best interest by participating in the legal action that resulted from his operation of the employer's vehicle. The administrative law judge cannot conclude to a certainty that his failure to participate in the arbitration caused the substantial award of damages to the plaintiff. However, as the driver involved in the accident, he was a first-hand witness. It seems unlikely that his failure to be available for examination and cross-examination enhanced the employer's position. It was decided that he would not testify only after he failed to make himself available to meet with the attorneys to prepare for the proceeding. The administrative law judge concludes that his failure to meet with the employer's attorney to prepare for the arbitration constituted a substantial disregard of the employer's interests. For the reasons cited herein, benefits are denied.

Mr. Townsend has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Townsend will be required to repay benefits already received.

DECISION:

The representative's decision dated October 30, 2008, reference 01, is hereby reversed. Mr. Townsend was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Townsend will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs