

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN M GILBERT-COULTER
Claimant

APPEAL NO. 10A-UI-15738-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 10/17/10
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 November 10, 2010, reference 01, which held that no disqualification would be imposed regarding Shawn Gilbert-Coulter's separation from employment. After due notice was issued, a hearing was held by telephone on December 29, 2010. Mr. Gilbert-Coulter participated personally. The employer participated by Lea Peters, Human Resources. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Gilbert-Coulter 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. Gilbert-Coulter began working for Heartland on March 11, 2009 as an over-the-road driver. His last day of work was June 10, 2010. On or about that date, he was diagnosed as having acute coronary syndrome. On June 14, he was provided paperwork to take time off under the Family and Medical Leave Act (FMLA). The paperwork included a letter from human resources indicating that the doctor's certification for FMLA was due by June 29, 2010.

Mr. Gilbert-Coulter was confined to his home at the time the FMLA paperwork was received. He was not able to leave home until he underwent surgery on July 7. He was hospitalized for four days at that time. On or about July 8, he asked his doctor to fax the required information to the employer. Because the doctor required a \$20.00 fee that Mr. Gilbert-Coulter did not have, the documentation was not sent to the employer. The employer was not notified of any delay or potential delay.

The employer next heard from Mr. Gilbert-Coulter on September 9 when he indicated he had been released to work with a 15-pound lifting restriction. He was asked to fax the release to the

employer. On September 10, the doctor's office called to indicate it did not have a release to provide information concerning Mr. Gilbert-Coulter. He was notified and advised that he needed to provide the documentation by September 18. As of September 22, the employer had not received either the FMLA certification or the release to return to work. An attempt was made to contact him by phone on September 22, but the number was out of service. The same was true when the employer attempted to contact him on September 23. Mr. Gilbert-Coulter was to have called the employer on September 24 but did not do so. On September 27, the employer spoke to him and reminded him that he had not provided the requested documentation. He was told it had to be faxed to the employer by noon on September 28. As of 4:15 p.m. on September 28, no documentation had been received.

Because of the failure to provide documentation of his need to be off work, the employer made the decision to discharge Mr. Gilbert-Coulter. A letter was sent to him on September 30 and was signed for on October 7. He did not respond to the letter to advise of any extenuating circumstances that prevented him from providing the requested documentation.

Mr. Gilbert-Coulter filed a claim for job insurance benefits effective October 17, 2010. He has received a total of \$5,264.00 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. Gilbert-Coulter was discharged because he failed to provide documentation of his need to be absent. He was away from work from June 10 through September 27 without providing a doctor's excuse. The administrative law judge does not doubt that Mr. Gilbert-Coulter was experiencing medical problems during the period at issue. However, there was no medical documentation that his condition required him to remain off work or, if so, how long it required him to be off work. It was not unreasonable for the employer to require some type of medical documentation from an individual who has been off work for three months. There was ample time during the three months for the FMLA certification to be forwarded to the employer. It appears that the employer would have been willing to accept the FMLA certification even after the June 29 due date.

At the very least, Mr. Gilbert-Coulter could have provided a release when he told the employer on September 9 that he could return to work with restrictions. Doctors usually do not require a fee to write a return to work excuse. Mr. Gilbert-Coulter had from September 9 until noon on September 28 in which to provide the doctor's excuse but failed to do so. The evidence does not establish any reasonable cause for not providing a doctor's release. Mr. Gilbert-Coulter's failure to provide documentation of the need to be absent for three months constituted a substantial disregard of the standards the employer had the right to expect. As such, it constituted misconduct within the meaning of the law and benefits are denied.

Mr. Gilbert-Coulter has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the 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. An overpayment 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 benefits already received will have to be repaid.

DECISION:

The representative's decision dated November 10, 2010, reference 01, is hereby reversed. Mr. Gilbert-Coulter was discharged by Heartland for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Gilbert-Coulter will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw