

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD GONZALEZ
Claimant

APPEAL NO. 13A-UI-06558-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 04/28/13
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 11, 2013. Claimant Richard Gonzalez participated. Dave Dalmasso, Human Resources Representative, represented the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard Gonzalez was employed by Heartland Express, Inc., of Iowa as a full-time over-the-road truck driver from January 2012 until April 18, 2013, when Terminal Manager Manny Pineiro discharged him from the employment for allegedly being rude to a customer at the time of a delivery. On April 15, 2013, Mr. Gonzalez had delivered a load of Coca-Cola two-liter bottles to a Coca-Cola facility. The load of freight was a no-touch, sealed load, which, pursuant to the employer's policies, meant that Mr. Gonzalez was only to move the trailer of freight from its starting point to its delivery point and was not authorized either to break the seal on the load or to touch the freight. The Coca-Cola facility that had prepared the load had inadequately shrink-wrapped the pallets of product and some of the product had fallen onto the floor of the trailer during transit. When Mr. Gonzalez got to the delivery site, a Coca-Cola representative directed Mr. Gonzalez to restack the product by hand. Mr. Gonzalez refused to comply and cited Heartland Express delivery policy as the basis for the refusal. A representative of Coca-Cola subsequently alleged to Heartland Express, to Mr. Pineiro, that Mr. Gonzalez had been rude when interacting with the Coca-Cola staff at the delivery site.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s) alone. The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's

power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct on the part of Mr. Gonzalez in connection with the April 15, 2013 delivery to the Coca-Cola facility. The employer failed to present testimony from a single witness with personal knowledge of the incident that triggered the discharge. The evidence establishes that Mr. Gonzalez delivered the load as directed and appropriately refused to perform work outside the scope of his duty and authority as a commercial truck driver. In essence, the Coca-Cola staff wanted Mr. Gonzalez to fix a problem that Coca-Cola staff had created. Mr. Gonzalez did not engage in misconduct when he refused to perform work outside the scope of his duties and authority. The weight of the evidence fails to establish that Mr. Gonzalez behaved inappropriately, including that he was rude, while interacting with Coca-Cola personnel. The mere fact that Coca-Cola staff was unhappy with the delivery situation is not enough to establish that Mr. Gonzalez engaged in misconduct in connection with his employment. Mr. Gonzalez was discharged for no disqualifying reason. Accordingly, Mr. Gonzalez is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's May 22, 2013, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css