

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEN C MCKNIGHT

Claimant

APPEAL NO. 10A-UI-05661-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 02/28/10

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 April 5, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 27, 2010. Claimant Ken McKnight 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: Ken McKnight was employed by Heartland Express as a full-time over-the-road truck driver from October 2008 until February 27, 2010, when Mark Taylor, the Kingston, Tennessee Terminal Manager, discharged him from the employment.

The final incident that prompted the discharge concerned Mr. McKnight's late delivery of a load on February 23, 2010. Mr. McKnight had been at home since February 19, 2010. The employer dispatched Mr. McKnight on the load with sufficient time to make the first delivery by 7:00 a.m. on February 23 and the second by noon on the same day. Mr. McKnight waited until almost midnight on February 22 to collect the load. This left Mr. McKnight with insufficient time to make the 10-12 hour delivery run. To make matters worse, the dispatch instructions directed Mr. McKnight to stop for fuel at a facility that was 100 miles off his route. Mr. McKnight contacted dispatch when he realized the fuel stop error and made arrangements to stop at a facility on the delivery route. But when Mr. McKnight got to the fueling facility he was delayed about an hour due to billing issues outside his control. Mr. McKnight made the first delivery late at 10:29 a.m. and made the second delivery late at 2:01 p.m.

In making the decision to discharge Mr. McKnight from the employment, the employer considered two prior incidents. On November 3, 2009, Mr. McKnight was late delivering a load

because he was stuck in traffic that was backed up due to an accident. On December 29, 2009, the employer had to reassign a load when Mr. McKnight overslept.

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). 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 weight of the evidence establishes that Mr. McKnight was negligent in waiting until the last minute to collect the load on February 22, 2010. By the time Mr. McKnight collected the load, there was no way for him to make timely deliveries. For this reason, the subsequent delay in connection with the fueling issue is a non-issue. The weight of the evidence indicates that Mr. McKnight was negligent on December 29, 2009 when he overslept and a load had to be reassigned to another driver. The evidence fails to establish negligence or carelessness in connection with the November 3, 2009 late delivery because the delay was beyond Mr. McKnight's control. The evidence does not establish a pattern of negligence so recurrent as to indicate a willful or wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. McKnight was discharged for no disqualifying reason. Accordingly, Mr. McKnight is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. McKnight.

DECISION:

The Agency representative's April 5, 2010, 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/pjs