

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARNELL BARKER
Claimant

APPEAL NO. 12A-UI-13368-VST

HEARTLAND EXPRESS INC OF IOWA
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/07/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 2, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 7, 2012. The claimant participated personally. The employer participated by Dave DaMasso. The record consists of the testimony of Darnell Barker and the testimony of Dave DaMasso.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a trucking company. The claimant was hired as an over-the-road driver on January 6, 2012. He was a full-time employee. His last day of work was October 4, 2012. He was terminated on October 10, 2012.

The incident that led to the claimant's termination occurred on October 4, 2012. The claimant was involved in an accident in Maryland. It was raining and as the claimant rounded a curve, he struck a disabled car that was partially on the road way. The claimant was traveling 60 to 62 miles per hour. The speed limit was 65 miles per hour. The claimant did not see the parked vehicle until it was too late. There were no hazard lights or hazard markers to show that the car was there. He was given a ticket for negligent driving and failing to control his speed. The claimant is fighting the tickets and seeking to have them dismissed.

The claimant was not involved in any other accidents that were his fault while he worked for the employer.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. The legal definition of misconduct excludes negligence in an isolated situation. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The evidence established that the claimant was discharged for a single accident that occurred while he worked for the employer. Although the employer determined that the claimant was at fault, the claimant strongly disagrees with that conclusion. Even if the claimant was at fault for the accident, Iowa law states that a single act of negligence is not sufficient to show disqualifying misconduct. There is no pattern of accidents that were due to the claimant's fault, which might show wanton carelessness. This was a simple accident. Even if it was due to the claimant's negligence,

there is still no proof of disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 2, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs