

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHONTEL A NEWTON
Claimant

APPEAL NO. 07A-UI-10809-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 10/14/07 R: 12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 9, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 10, 2007. Claimant participated. Employer participated through Lea Peters.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time over-the-road driver from April 2, 2004 until October 5, 2007 when he was discharged. On October 2, claimant was assigned to take a relay load from another driver from the terminal at Chester, Virginia five and a half or six hours to Carterette, New Jersey, which was due at the customer's location at 3:00 a.m. on October 3. On October 2, claimant drove from his home in North Carolina to the terminal for two and a half hours. Upon his arrival at the terminal, he had to wait four or five hours for the relay driver to arrive before he could leave with the load. Since the dispatcher led him to believe the relay driver's arrival was imminent, he did not sleep while he was waiting but performed miscellaneous truck maintenance, filled the fuel tank, and washed the truck. Because of this delay and since claimant had not slept well the night before, he had to rest before the delivery to avoid driving while drowsy, which extended his arrival time to 4:18 a.m.

He was warned about a late delivery on either August 8 or 27, 2007. Employer accused him of leaving his house late on Wednesday, August 8 but claimant is not at home except on weekends. Employer does not have information about when the load was supposed to have been picked up or how late the delivery was. Another allegation of late delivery was on August 27 but employer had no specific information about the delivery time or any other details of the load and claimant has no recollection of the incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a

“wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The October 3 issue was not entirely claimant’s responsibility since he had to wait several hours for the relay driver and was not made aware of the true extent of the delay so he could rest while waiting. As to the earlier alleged incidents, employer’s information is either inconsistent with claimant’s home schedule or insufficient details were available to make a finding of misconduct. Thus, employer has not met its burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning to such an extent that he should be disqualified from benefits. Benefits are allowed.

DECISION:

The November 9, 2007, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css