

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY M CHASTAIN

Claimant

HEARTLAND EXPRESS INC OF IOWA

Employer

APPEAL NO. 09A-UI-17434-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated November 10, 2009, reference 01, that held the claimant was not discharged for misconduct on October 16, 2009, and benefits are allowed. A telephone hearing was held on December 29, 2009. The claimant, and his Attorney, Bob Ferguson, participated. Dave Dalmasso, HR Representative, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began work on January 5, 2001, and last worked as a full-time over-the-road driver on September 21, 2009. The employer has a written policy for preventable accidents. A preventable accident is a dischargeable offense, if the damages exceed \$4,500.00.

The claimant was driving a company truck and upon entering an exit ramp near Jacksonville, Florida on September 21, 2009, he had an accident. The exit ramp has a speed control sign. The claimant locked-up his brakes when he realized he was driving too fast to make the curve. The claimant failed to make the curve, and rolled the truck. The Florida highway patrol issued the claimant a citation for exceeding a safe speed for the curve, and he pled guilty with payment of a fine. As of the date of this hearing, the employer has paid damages of more than \$22,000.00. The claimant was injured and placed on worker's compensation. The claimant was released to return to work on October 15. The claimant was discharged on October 15 for violation of the employer preventable accident policy.

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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on October 16, 2009, because of a single act of negligent driving that does not arise to the level of job disqualifying misconduct.

The employer preventable accident policy violation contains a provision that the dollar amount of damages dictates the level of discipline. In this case, since the dollar amount exceeded \$4,500.00, the claimant was discharged rather than incurring a lesser discipline for this single accident. While the claimant may have exceeded a safe driving speed to make the curve that was a contributing cause for the accident, the dollar amount of damage bears no relationship to the act of negligence the employer relies upon for discharge. There is no provision in the Iowa Employment Security law as interpreted by the Iowa courts that the amount of damages incurred in an accident, dictate whether an individual has committed misconduct or not.

DECISION:

The decision of the representative dated November 10, 2009, reference 01 is affirmed. The claimant was not discharged for misconduct in connection with employment on October 16, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css