**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**EUGENE BOOKER**
Claimant

**HEARTLAND EXPRESS INC OF IOWA**
Employer

**APPEAL NO. 14A-UI-05718-S2T**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 05/04/14**
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Eugene Booker (claimant) appealed a representative's May 27, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Heartland Express Inc. of Iowa (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 25, 2014. The claimant participated personally. The employer participated by David Dalmasso, Human Resources Representative, and Don McGlaughlin, Safety Director.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 16, 2012, as a full-time over-the-road driver. The claimant signed for receipt of the employer's handbook on May 16, 2012. The employer did not issue the claimant any warnings during his employment.

On April 19, 2014, the claimant saw a sign for an upcoming bridge. He read the measurement of the bridge to be thirteen feet, eleven inches. In fact the sign clearance read twelve feet, eleven inches. The employer's tractor trailer that the claimant was driving had a height of thirteen feet, six inches. The claimant drove onto the bridge and caused damage to the trailer. Law enforcement was called but the claimant was not cited. The load was removed. The employer told the claimant to drive the tractor trailer to Denver, Colorado, where there was a terminal.

On April 24, 2014, in Denver, Colorado, the claimant was told to wait three hours for the safety director's decision on his situation. The claimant understood the safety director to say he was given another chance and the claimant should have his eyes examined when he returned home. The claimant was relieved to still have a job and to be dispatched a load. The safety director remembers talking to the claimant about the incident and saying he was going to investigate.

The employer assigned the claimant a load from Denver, Colorado, to Minnesota. He was then dispatched to a truck stop. After that he was to arrive in North Liberty, Iowa, on April 29, 2014. On April 30, 2014, the safety director terminated the claimant for the incident on April 19, 2014. The safety director did not want to terminate the claimant until April 30, 2014, because he wanted to talk to the claimant before he terminated him. The employer could not bus the claimant in to a terminal for an investigation because the employer rarely bused employees anywhere. After the termination the employer put the claimant on a bus home to Birmingham, Alabama.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on April 19, 2014. The claimant was not discharged until April 30, 2014. The reason the employer offered at the hearing for not terminating the claimant earlier is because the safety director wanted to talk to the claimant. While the parties disagree upon what was said, the employer admitted talking to the claimant on April 24, 2014. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

The claimant's and the employer's testimony was not the same. The administrative law judge finds the claimant's testimony to be more credible because the employer's testimony was internally inconsistent.

**DECISION:**

The representative's May 27, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs