

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CRYSTAL Y COTTON

Claimant

APPEAL NO. 17A-UI-12317-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 10/29/17

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Heartland Express Inc of Iowa (employer) appealed a representative's November 21, 2017, decision (reference 01) that concluded Crystal Cotton (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 20, 2017. The claimant participated personally. The employer participated by Lea Peters, Human Resources Generalist, and Brent Helle, Senior Director of Midwest Operations. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

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 January 27, 2017, as a full-time over-the-road driver. The claimant signed for receipt of the employer's handbook on January 25, 2017. The handbook states that an employee may be terminated if she shows "[d]isrespectful behavior towards co-workers and customers". The employer did not issue the claimant any warnings during her employment.

On October 26, 2017, the claimant was scheduled to deliver a load to a company in Maumelle, Arkansas, at 1:00 p.m. The property was very small. In the past she had delivered at 9:00 a.m. On October 26, 2017, the claimant drove to the customer location. A representative of the company told the claimant that the 9:00 a.m. and 10:00 a.m. trucks were on the property. The 11:00 a.m. was not present. The representative told the claimant to wait at a nearby truck stop because there was not room on the property. The claimant went to the truck stop and returned at about 12:15 p.m.

The driver of the truck with the 12:00 p.m. appointment and the claimant walked in at the same time. The customer representative told the other driver to proceed to a dock and told the

claimant to wait. As the claimant walked with the customer representative, the claimant asked her about the company's procedures for late drivers. The claimant asked if late drivers were supposed to unload last. The representative said "We're going to do it like this". The claimant said "okay" and walked to her truck. She parked her truck out of the way until she could move it into the bay where the customer representative had instructed.

The customer representative was irritated by the claimant's question and called the police. The police went to the claimant's truck and told her she had to exit the property. The claimant left the property and went to a truck stop in Little Rock, Arkansas. Another driver exchanged loads with the claimant. The customer told the employer that the claimant was belligerent, threatening and "blocked all the doors with her rig and trailer and refused to move". On November 1, 2017, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of November 20, 2017. The employer participated personally at the fact finding interview on November 20, 2017, by Lea Peters.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events for which she was terminated. The employer did not provide any eye witnesses. It provided an e-mail from one person. Only the person's first name was provided. It is unknown whether the author of the e-mail was an eye witness.

DECISION:

The representative's November 21, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs