BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DANIEL S MAYS

Claimant,

and

HEARTLAND EXPRESS INC OF IOWA

Employer.

HEARING NUMBER: 09B-UI-02787

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Daniel Mays (Claimant) worked as a full-time driver for Heartland Express (Employer) until the date of his discharge on December 30, 2008. (Tran at p. 2; p. 5). As a truck driver the Claimant's maximum time driving without a break is regulated by federal law. 49 C.F.R. part 395. On December 22nd and 23rd the Claimant was driving a load to Carlisle Pennsylvania. (Tran at p. 6-7). The Claimant was instructed that, in order to comply with DOT regulations, he must take a ten-hour break somewhere between Pontoon Beach (near St. Louis) and Carlisle Penn. (Tran at p. 4; p. 7-8; p. 11).

On December 23, 2008 it began to snow where the Claimant was. (Tran at p. 3). When he noticed the snow the Claimant was aware that that he should continue his break. (Tran at p. 3; p. 11-12). The

Claimant decided "I wasn't going to go back to sleep because when it started snowing I had dry roads." (Tran at p. 3). The Claimant continued driving to stay ahead of the weather. (Tran at p. 3; p. 8). On his

log book, however, the Claimant indicated that he had begun a break in Mooresville, Indiana at 7:30 pm on December 22 and came off break at 7:00 a.m. on December 23rd. (Tran at p. 7; Ex. 1). The Claimant, in fact, took no such break. (Tran at p. 3; p. 8; p. 11). The actual break was around 4½ hours. (Tran at p. 8; Ex. 1 p. 3-4). This put the Employer at risk over non-compliance with federal regulations. (Tran at p. 8-9; p. 10). When the Employer detected the falsification the Claimant was fired over it. (Tran at p. 2; p. 6; p. 10). The Claimant was aware of the importance of accurate logs. (Tran at p. 10).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." Huntoon v. Iowa Department of Job Service, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to

misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The Claimant's testimony of an honest confusion is not credible. It does not seem likely that the Claimant would forget that he had driven straight through to stay ahead of the snow. We do not believe his testimony that he forgot. Thus the record shows that the Claimant was told to take a 10-hour break, the Claimant consciously chose not to take the full break, the Claimant knew he had chosen not to take the full break, and the Claimant nevertheless wrote out his log as if he had taken the full break. Had the Claimant simply kept driving against orders maybe we would have awarded benefits on the theory that his decision was in "good faith." But when this conscious decision to keep driving is compounded by the intentional falsification of the driving log the Claimant has demonstrated a willful or wanton disregard of the employer's interest. That interest involves not only compliance with federal regulations but also the ability to trust the information from drivers. (Tran at p. 8). The Claimant committed misconduct and must be disqualified. See Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991)(misconduct based on dishonesty in employment application); Sallis v. Employment Appeal Bd. 437 N.W.2d 895, 897 (Iowa 1989)(dishonesty regarding absences is exacerbating factor).

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

> 871 IAC 23.43(3) Rule of two affirmances.
>
> a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.
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> b. However, if the decision is subsequently reversed by higher authority:
>
> (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
> (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
> (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question.

DECISION:

The administrative law judge's decision dated March 17, 2009 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time as the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)"a".

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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Elizabeth L. Seiser

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Monique F. Kuester

RRA/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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John A. Peno

RRA/fnv