

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHEL R SCHEIN
Claimant

APPEAL NO. 10A-UI-02830-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 01/24/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Heartland, filed an appeal from a decision dated February 12, 2010, reference 01. The decision allowed benefits to the claimant, Michel Schein. After due notice was issued, a hearing was held by telephone conference call on April 6, 2010. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Lea Peters and Operations Manager Cliff Chapman.

ISSUE:

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

FINDINGS OF FACT:

Michel Schein was employed by Heartland from March 4, 2009 until January 15, 2010 as a full-time over-the-road driver. On January 15, 2010, the claimant was at the company's Columbus, Ohio, terminal and Operations Manager Cliff Chapman received a call from the head of the service department. A one and one-half gallon gas can, and a generator, were found under the bunk in the sleeper portion of the tractor.

The claimant acknowledged he had those items in the truck but maintained both were empty and he was merely taking them back home with him. He had intended to use them to power a small microwave oven in the event he was stranded in bad weather. He is also a smoker and although smoking is not prohibited in the tractors by the employer, it added to the employer's concerns.

Mr. Schein was discharged by Mr. Chapman by phone on January 15, 2010. He has received unemployment benefits since filing a claim with an effective date of January 24, 2010.

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.

Although the employer had no specific rule forbidding flammable material inside the tractor, the administrative law judge does not consider it to be something a reasonable driver would do. Mr. Schein maintains the gas can and generator were empty but this is not credible. If the purpose of having the generator was to help power a microwave in the event the claimant was stranded in bad weather, fuel would have to be available or it would not operate. His contention he would "go and get some gas" to fuel it is not logical because if he were near enough to a location which sold gas, he would not be stranded. And if he were not near a source of gasoline, he would have to have had a supply with him to make the generator worth the effort to carry.

The record establishes the claimant was discharged for negligence to such a degree as to constitute deliberate misconduct. He was transporting flammable material which could have ignited from his cigarettes, from an accident or rollover, causing harm to himself, others and the equipment. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of February 12, 2010, reference 01, is reversed. Michel Schein is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css