

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS R VIKSTROM
Claimant

APPEAL NO. 09A-UI-08185-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 04/19/09
Claimant: Respondent (2)

871 IAC 23.43(9)a – Cross Wage Claim Relief of Charges
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Heartland Express (employer) appealed a representative's May 27, 2009 decision (reference 01) that concluded it could not be relieved of charges based on the employment of Thomas Vikstrom (claimant). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 23, 2009. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by David Dalmasso, Human Resources Representative, and Mark Taylor, Terminal Manager.

ISSUE:

The issue is whether the employer can be relieved of charges.

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 April 30, 2008 as a full-time over-the-road truck driver. The employer issued the claimant warnings on May 6, June 15, 30, 2008, and January 19, 2009, for failure to follow instructions regarding untimely delivery and running out of hours before delivery.

The claimant committed to deliver a load on time. On April 15, 2009, the claimant ran out of his eleven hours of drive time and three hours of waiting time when he was fourteen miles from his delivery point. The employer had to get another driver to deliver the load and it was delivered late. The employer terminated the claimant on April 17, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that under Iowa law the claimant was discharged for misconduct.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim....

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 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right

by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant would not be eligible to receive unemployment insurance benefits under Iowa law and the employer would be relieved of charges.

DECISION:

The representative's May 27, 2009 decision (reference 01) is reversed. Under Iowa law the claimant was discharged for misconduct. As such the claimant would not be eligible to receive unemployment insurance benefits under Iowa law and the employer would be relieved of charges.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css