

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT WALKER
Claimant

APPEAL NO. 09A-UI-02497-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 01-11-09 R: 12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 17, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 11, 2009. The claimant did participate. The employer did participate through John Clark, Operations Managers and Lea Peters, Human Resources Generalist.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver full time beginning January 31, 2007 through August 8, 2008 when he was discharged.

On August 6 the claimant fell asleep in the cab of his truck causing him to have a late load delivery and to miss another load he was to deliver. The employer was charged by the customer whose load was delivered late with a "service failure." The employer could lose the client's business if they accrue too many service failures. The claimant failed to notify the employer when he awoke from his nap and did not check his Qualcomm when the employer was trying to locate him. The claimant was previously disciplined by the employer for his failure to timely communicate with them when on July 9 he was eight hours late delivering a load after he got lost trying to find the delivery location and waited hours before calling the employer for assistance.

The claimant also was verbally warned in April 2008 for another late delivery. The claimant was discharged because he fell asleep in the cab of the truck and made a late delivery and because he did not notify the employer of what had occurred so the employer could make arrangements to have another driver deliver the load.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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 claimant fell asleep in the cab of his truck causing him to make a late delivery. Then the claimant failed to communicate with the employer about what had occurred so the employer could attempt to mitigate the damage. The claimant had previous warnings about his failure to communicate and about late deliveries. This conduct was not an isolated incident of poor judgment and inasmuch as employer had previously warned claimant about the same issues leading to the separation, it has met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Misconduct has been established and benefits are denied.

DECISION:

The February 17, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css