

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L LUCAS**  
Claimant

**APPEAL NO. 09A-UI-08391-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 04/19/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Richard Lucas, filed an appeal from a decision dated June 2, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 29, 2009. The claimant participated on his own behalf. The employer, Heartland Express, participated by Human Resources Representative Dave Dalmasso.

**ISSUE:**

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

**FINDINGS OF FACT:**

Richard Lucas was employed by Heartland Express from December 8, 2004 until April 21, 2009. He was hired as a full-time over-the-road truck driver. In February 2006 he had a preventable, rear end accident which caused \$68,000.00 in damage to the employer's property. He was cited for failure to maintain a safe distance by the Ohio State Patrol. The company policy, which the claimant received, states a driver may be discharged for any preventable accident causing more than \$4, 500.00 in damages.

The claimant was on light duty in the office until April 2009, as a result of injuries received in the accident. When his doctor released him to return to work as a driver on April 20, 2009, the employer then reviewed the February 2006 accident. It was determined he was responsible for the accident and it had been preventable. He was discharged by Terminal Manager on April 21, 2009.

**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.

Iowa Code section 96.5-2-b 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:

b. If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

The employer had been aware of the accident for over three years and could have reviewed and investigated it at any time in that period. Instead it chose to wait until the claimant was released from light duty to review it and discharge him. The provisions of the above Administrative Code section requires there to be a current, final act of misconduct which precipitates the decision to discharge before disqualification may be imposed. A gap of three years puts the accident, even though it was preventable, far beyond a current act.

The employer never notified the claimant during the three years he was on light duty that the accident would be reviewed once he was released from all restrictions. He was not notified by anyone his job was in jeopardy during that time depending on the outcome of the accident review at some unknown time in the future.

The record establishes the claimant was discharged but not for a current, final act of misconduct. Disqualification may not be imposed.

**DECISION:**

The representative's decision of June 2, 2009, reference 01, is reversed. Richard Lucas is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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