

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS CANADY

Claimant

APPEAL NO: 12A-UI-12896-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 10-07-12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 22, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 29, 2012. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Heartland Express from August 31, 2007 to September 12, 2012. On September 6, 2012, the claimant was driving in southern Ohio around 5:30 a.m. when a can of fruit he purchased with other groceries at Wal-Mart fell on the floor and began rolling around. The claimant was concerned the can of fruit was going to roll under his brake, gas or clutch pedals and cause a potential accident or dangerous situation. He turned on the dome light to retrieve the can from the floor and went onto the very sandy shoulder. When he corrected to get fully back on the road the truck went across a lane and hit the median before going back across his lanes and overturning. The claimant's foot was wedged under a pedal and he could not exit the truck, which was lying on the driver's side. Passerby's stopped and called 911. The claimant was extricated from the truck and notified the employer of the accident and a shop foreman was sent from Columbus, Ohio, to help with the situation. The claimant was tested for drugs and alcohol and the tests were all negative. The employer reviewed the situation, accusing the claimant of trying to consume the can of fruit while driving, which he adamantly denied, before terminating his employment due to the accident September 12, 2012.

The claimant has been driving commercially for 40 years without an accident where he was at fault. He had received five safety awards and high praise from the employer about his driving, safety and professionalism during the five years of his employment there. He never had an

accident for which he was at fault while working for the employer and had never received a verbal or written warning of any kind.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant reached for a can of fruit that fell out of his sack of groceries while driving because he was afraid the can would become wedged under the brake, gas or clutch pedals and cause an accident. While his actions ended up causing an accident anyway, this was his first "at fault" accident during the five years of employment with Heartland and there is no evidence that his behavior was intentional misconduct. His driving record alone establishes that the claimant is a professional, conscientious and safe driver, which was recognized by the employer five times during his five years of employment with Heartland.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in

disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 22, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css