

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL W MCKELVEY
Claimant

APPEAL NO. 11A-UI-11761-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 07/24/11
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Daniel McKelvey, filed an appeal from a decision dated August 25, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 29, 2011. The claimant participated on his own behalf. The employer, Heartland Express, participated by Human Resources Generalist Lea Peters.

ISSUE:

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

FINDINGS OF FACT:

Daniel McKelvey was employed by Heartland from August 8, 2007 until August 23, 2011 as a full-time over-the-road truck driver. At the time of hire, he received, and signed, documents stating the employer's policies. One policy informs employees they are subject to immediate discharge if they are responsible for an accident resulting in more than \$4,500.00 in damage. The law enforcement agency cited him for illegal lane change.

On July 19, 2011, the claimant was involved in a three-vehicle accident in South Carolina. He had changed lanes, struck another vehicle, and a third vehicle became involved. The accident resulted in one fatality. The law enforcement agency cited him for illegal lane change. Mr. McKelvey was suspended by the employer pending investigation of the accident. On August 23, 2011, Assistant Manager of Risk Management Troy Wallace notified the claimant he was discharged because of the accident.

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.

The claimant was suspended and then discharged for being responsible for a serious accident that resulted in more than \$4,500.00 in damages and one fatality. He has the responsibility to operate the employer's equipment in a safe and prudent manner, observing all safety regulations and traffic laws. His illegal lane change was an action solely within his control and the action resulted in the damages and the fatality. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 25, 2011, reference 01, is affirmed. Daniel McKelvey is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw