

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN L FLESHER
Claimant

APPEAL NO. 11A-UI-13709-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 09/25/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa filed a timely appeal from a representative's decision dated October 14, 2011, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone hearing was held on November 14, 2011. The claimant participated personally. The employer participated by Mr. Dave DalMasso, human resource representative.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kevin Flesher was employed by Heartland Express, Inc. of Iowa as an over-the-road tractor trailer driver from January 16, 2010, until his discharge on September 28, 2011. Mr. Flesher worked on a full-time basis and was paid by the mile. His immediate supervisor was his dispatcher.

Mr. Flesher's last day of work was August 19, 2011. At that time, the claimant was hospitalized because of diabetes and medically unable to work. Mr. Flesher attempted to have paperwork completed by his physician on two occasions to meet the requirements of the Family and Medical Leave Act. However, the documentation was not correctly faxed by the claimant's physician to the employer and the doctor was unwilling to fax additional paperwork the third time. When the employer was unwilling to allow Mr. Flesher any additional time away from work without the FMLA applications being completed, the claimant was informed that he would be terminated from employment. Based upon his inability to have his doctor supply any additional documentation, the claimant did not dispute the employer's decision to terminate him from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the employer made a business decision to terminate Mr. Flesher from his employment with Heartland Express Inc. of Iowa because the claimant had exhausted all time

away from work available to him and the claimant was unable to provide the required medical documentation to begin a medical leave of absence under the provisions of the Family and Medical Leave Act.

At the time that the claimant was discharged, he was medically unable to return to his work with the company and the claimant had kept the company notified of his status and his inability to report for work for medical reasons. Because Mr. Flesher was aware that his doctor would not again fax medical information to the employer for the Family and Medical Leave Act, the claimant did not disagree with the employer's decision to terminate him.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for the above-stated reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Mr. Flesher may have been a sound decision from a management viewpoint, the reason for the claimant's discharge was non-disqualifying. At the time of the claimant's termination, he was medically unable to return to work and had properly reported his absences to the employer. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated October 14, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw