

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIM W BENNETT

Claimant

APPEAL NO. 11A-UI-01423-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 01/02/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 26, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 9, 2011. Employer participated by Lea Peters. Claimant participated personally.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed from November 12, 2007 through December 20, 2010. Claimant was an over-the-road driver. Claimant was discharged because of a preventable accident which occurred on December 22, 2010. The claimant hit a snowplow with the right front end of the truck he was driving. The claimant did not see the snowplow because of the weather conditions. The claimant drove over 100,000 miles per year for the employer during his employment and this is the only incident relied upon by the employer in the decision to discharge claimant.

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 employer has a right to expect that claimant will obey the laws of the road and that he will safely operate their equipment. The claimant's testimony that he did not see the snowplow that he hit is credible and while a better look out may have prevented this accident this record shows that this lapse in attention was at most isolated incident in negligence. Isolated incidents of negligence are not deemed misconduct within the meaning of the statute. Therefore, while the employer may have had grounds to discharge the claimant the separation from employment is not for disqualifying job misconduct.

DECISION:

The decision of the representative dated January 26, 2011, reference 01, is reversed. Benefits allowed, provided otherwise eligible.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/css