

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD K FOSTER
Claimant

APPEAL NO. 09A-UI-00702-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS SERVICES INC
Employer

**OC: 11/02/08 R: 12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Heartland Express Services, Inc. (employer) appealed a representative's January 15, 2009 decision (reference 01) that concluded Richard K. Foster (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2009. The claimant participated in the hearing. Leah Peters appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 18, 2006. He worked full time as an over-the-road truck driver in the employer's trucking company. His last day of work was November 4, 2008. The employer discharged him on that date. The reason asserted for the discharge was a service failure in making a late delivery that day.

The claimant was due to make a delivery in Chambersburg, Pennsylvania at 7:30 a.m. (PA time) on November 4. He arrived at a truck stop between 15 and 17 miles away from the delivery location at approximately 5:50 p.m. on the evening prior to delivery and stayed in the sleeper berth of his truck. At approximately 6:40 a.m. on November 4 he left the truck stop and entered the nearby interstate highway, which would lead directly to the delivery site. Virtually immediately after entering the highway, he was force to come to a stop due to an accident on the highway. He contacted his dispatcher by phone at approximately 7:00 a.m. to advise the employer of the situation. The interstate was effectively shut down for nearly two hours. The claimant was not able to make his delivery until about 8:43 a.m. (PA time).

The employer's interpretation of the satellite Qualcomm reports was that the claimant had not even left the truck stop until at least 7:30 a.m., and so concluded that the failure to make the

delivery by the deadline was due not primarily due to traffic issues, but due to the claimant not leaving before the delivery time. The employer has not established that the satellite information may have registered little or no movement of the truck prior to 7:30 a.m. because of being forced to come to a stop almost immediately upon beginning movement and entering the nearby interstate at approximately 6:20 a.m. as asserted by the claimant.

There was no record of any prior disciplinary actions or warnings to the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to make the delivery on time on November 4, 2008. Under the circumstances of this case, the claimant's failure to make the delivery timely was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 15, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css