

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT MCLAUGHLIN
Claimant

APPEAL NO. 10A-UI-02322-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**Original Claim: 06/14/09
Claimant: Respondent (2/R)**

Iowa Code § 96.6-2 - Timeliness of Protest
Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed an unemployment insurance decision dated February 2, 2010, reference 01, which held it failed to file a timely protest regarding the claimant's separation of employment on April 24, 2009 and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2010. The claimant participated in the hearing. The employer participated through Lea Peters, Human Resources Generalist. Employer's Exhibits One and Two were admitted into evidence. 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:

The issue is whether the employer's protest in this matter was timely and, if so, whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on June 24, 2009. The employer received the notice and filed its protest on June 29, 2009. Iowa Workforce never received the employer's protest and benefits were allowed to the claimant. The employer first became aware the claimant was receiving benefits after receiving its 2009 third quarterly Statement of Charges. The employer faxed its appeal on December 8, 2009.

The claimant was employed as a full-time driver from April 18, 2008 through April 9, 2009, when he went home to obtain an updated physical pursuant to the Department of Transportation's guidelines. All drivers are responsible for ensuring they have their physicals updated in a timely manner. The claimant called the employer on April 15, 2009 and said he would have the physical sent in by noon, but it never arrived. There was no contact from the claimant, and on

April 20, 2009 the fleet manager called him and left a message. The fleet manager advised the claimant if he did not return the call that day, the employer would have to call the police, since the claimant had the employer's truck.

The claimant returned the call several hours later and stated that the physical would be sent in by noon. No physical was sent in that day or the next and on April 21, 2010 the employer retrieved its truck from the claimant's residence. One of the employer's termination policies provides that an employee will be terminated for being off work for any reason for a period exceeding 15 days. The claimant had reviewed and signed for these policies. The employer did not hear from the claimant or receive his updated physical by April 24, 2009 and terminated him due to a voluntary separation.

The claimant contends the employer told him he had to have a stress test and it took until the middle of May 2009 to get it completed. All drivers are responsible for ensuring their physicals are updated in accordance with the rules and guidelines of DOT. The employer was merely reminding the claimant about a stress test, but the claimant was ultimately responsible for his own medical requirements.

The claimant filed a claim for unemployment insurance benefits effective June 14, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The employer filed a protest in a timely manner on June 29, 2009, but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely.

The substantive issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

Rule 871 IAC 24.25 provides that a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant's intent to quit and his actions to carry it out can be seen in his failure to provide an updated physical in a timely manner. However, the claimant contends he did not quit, so the separation will be analyzed as a discharge.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was terminated on April 24, 2009 in accordance with company policy. He had to have a valid commercial's driver's license as a condition of employment and was required to pass an updated physical in order to maintain that license. The claimant failed to provide the employer with an updated physical in a timely manner. Additionally, he knew or should have known that being off work for any reason for a period exceeding 15 days would result in his termination. The claimant's excuses as to why he failed to provide a timely updated physical do not negate the facts of the case. The claimant's conduct shows an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to

award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The employer's protest is timely. The unemployment insurance decision dated February 2, 2010, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw