IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THOMAS E TOWNSEND
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL NO: 10A-UI-07819-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/18/10
Claimant: Respondent (5)

Section 96.5-2-a – Discharge
871 IAC 24.32(9) – Suspension or disciplinary layoff
871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (employer) appealed a representative's May 21, 2010 decision (reference 01) that concluded Thomas E. Townsend (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 15, 2010. The claimant participated in the hearing and presented testimony from one other witness, Cindy Blankenship. Dave Dalmasso appeared on the employer's behalf and presented testimony from one other witness, Dan Dietter. During the hearing, Claimant's Exhibits A, B, and C were entered 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge or suspension for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 20, 2009. He worked full time as an over-the-road truck driver. Since approximately April 2010 he had been working based out of the employer's Atlanta, Georgia regional terminal. His last day of work was April 15, 2010.

The claimant had stayed overnight on the night of April 13 into the morning of April 14 at a commercial truck stop in the Atlanta vicinity. At about 5:45 a.m. on the morning of April 14 he awoke to discover that there was a fire in the tire area of his truck. Emergency vehicles were summoned, but the claimant also used his fire extinguisher to douse the fire. A determination was made by the local fire marshal that the fire was likely arson, and an investigation was begun. The vehicle was towed, and the claimant stayed in the area on the night of April 14.

On April 15 the employer informed the claimant that he would be sent home at least until such time as the truck was repaired. On April 16 he was informed that he would remain off duty until

such time as the arson investigation was completed; the employer considered him to be on an investigational suspension.

On April 29 the claimant informed the terminal manager, Mr. Dietter, that he was returning to Atlanta on May 3 to voluntarily submit to a polygraph examination to assist the investigation; Mr. Dietter then advised the claimant that since he was going to be in the vicinity he should remove his personal items from the truck, at least in part so that the truck could be put back on the road. On May 3 the claimant did submit to the polygraph, which indicated that the claimant was not being deceptive in his responses. The claimant also met with the fire marshal that day. After the meeting between the claimant and the fire marshal, the fire marshal contacted the employer's safety director, based in Iowa, and "advised him of the findings of the polygraph. I advised him that while a polygraph is not always accurate, this did lessen the focus on Mr. Townsend, but at that time no one was ruled out of the investigation." Claimant's Exhibit B. As of June 30, the investigation was still open, but there had been no further investigative acts taken regarding the claimant. Id.

After the claimant left the fire marshal's office, he went to the employer's terminal and cleaned out his personal items from the truck. Even though he understood that the polygraph had "vindicated" him, he understood that at best it would take the employer some time to determine whether that was sufficient to put him back into a truck; he felt the employer's removal of him from driving with no evidence that he was responsible for the truck fire amounted to an unwarranted disciplinary layoff. As a result, after cleaning out his personal items, he turned in his keys, cards, and book to Mr. Dietter and expressed his opinion that the employer's actions were wrongful. He then left the facility.

While Mr. Dietter had been aware that the claimant was taking the polygraph test on May 3, he had also understood that it was virtually impossible that the claimant would be returned to driving a truck that day, and was uncertain how long after the polygraph it might take for the employer to determine the claimant could be returned to duty, so he still wished to have the claimant's personal items removed from the truck. When the claimant came in and turned in not only the truck keys but the cards and book, as well as the comments made about how he felt the employer's actions in removing him from the truck were wrongful, he understood the claimant was resigning his position.

There was no time after the claimant was informed on about April 16 that was in effect on a suspension or investigational layoff pending the outcome of the inquiry into the fire in which the employer recalled the claimant for work or offered work to the claimant, and there was no time after the suspension or investigational layoff went into effect in which the claimant returned to active employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment.

871 IAC 24.1(113)a provides:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
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> a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

For purposes of unemployment insurance eligibility, a suspension is treated as a temporary discharge and the same issue of misconduct must be resolved. 871 IAC 24.32(9). A claimant is not qualified to receive unemployment insurance benefits if an employer has suspended or 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 suspended or discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify an 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 effectively suspending the claimant as of April 15, 2010 is the suspicion he might have some involvement in the truck fire and the desire to ensure that he had not been involved before returning him to duty. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact was culpable with regard to the truck fire. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The separation in this case between the claimant and the employer occurred on April 16, 2010 and can be characterized either as a disciplinary or investigatory suspension due to suspected but not proven involvement in the truck fire, which as covered above, was not established, or

alternatively, but with no difference in effect, as an investigational layoff by the employer due to the desire to obtain resolution of the pending investigation; either way, the employer had no work it was willing to give the claimant as of April 16. That is the separation date that must be examined with regard to determining the claimant's eligibility for unemployment insurance benefits. Unless there was a return to employment after that suspension or layoff, the subsequent events do not trigger another "separation."

As to the events which unfolded on May 3, while that certainly served to sour relations between the parties, nothing that occurred that day affects the claimant's eligibility for unemployment insurance benefits. No offer was made that day to recall the claimant to work that he refused; he did not choose to turn in his items that day rather than to return to work the employer had available for him. After the April 16 suspension/layoff, there was no subsequent recall or reemployment, and therefore there was not a subsequent separation. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's May 21, 2010 decision (reference 01) is modified with no effect on the parties. As of April 16, 2010, the employer effectively suspended the claimant or placed him on investigational layoff but not for disqualifying reasons. There was no subsequent reemployment and therefore no subsequent separation. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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