

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CARL E STEVISON**  
Claimant

**APPEAL 18A-UI-05643-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 04/22/18  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-23.43(9)a – Combined Wage Claim Relief of Charges

**STATEMENT OF THE CASE:**

Heartland Express Inc. of Iowa (employer) filed an appeal from the May 14, 2018, reference 01, unemployment insurance decision that did not relieve its account of benefit charges on the combined wage claim filed by Carl E. Stevison (claimant). The parties were properly notified about the hearing. A telephone hearing was held on June 7, 2018. The claimant did not respond to the hearing notice and did not participate. The employer participated through Human Resource Generalist Lea Peters. The Employer's Exhibit 1 was admitted into the record.

**ISSUE:**

Can the Iowa employer be relieved of benefit charges on the combined wage claim?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Over the Road Truck Driver beginning on April 27, 2016, and was separated from employment on April 24, 2017, when he was discharged. The employer has multiple policies stating possession or use of alcohol while working will result in immediate discharge. The claimant received and signed a copy of these policies during orientation.

On April 21, 2018, the claimant was dispatched to deliver a load to a customer in East Troy, Wisconsin. The claimant stopped responding to his dispatcher's messages which prompted the employer to use its tracking system to locate the truck. The truck was located behind a Sherwin-Williams store in Illinois on the claimant's route. The employer contacted the location and asked an employee to check on the claimant. It also contacted the local sheriff's office to conduct a welfare check. Both the store employee and sheriff reported that the claimant was fine. The claimant had told the sheriff that he was on a ten-hour rest period which was reported back to the employer.

The employer checked the claimant's driving record and determined he had just finished a 16-hour rest period. It sent another driver to rescue the load as it was in danger of arriving late. The rescue driver reported to the employer that the claimant smelled of alcohol and had empty beer cans in his truck. He also reported there was some damage to the front end of the claimant's truck. The rescue driver took the semi-trailer and drove it to the customer.

The employer contacted local police who went to the claimant's truck. The police arrested the claimant on suspicion of driving under the influence (DUI). The employer then had to have its truck towed to a secure location to prevent the claimant from operating its equipment when he was released.

On April 24, the Safety Director contacted the claimant to discuss the situation. The claimant did not deny the empty beer cans belonged to him. The Safety Director discharged the claimant at that time for violating its safety policies related to possession and use of alcohol while working.

The claimant filed a combined wage claim in Wyoming but earned wages from this Iowa employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant would be ineligible for benefits if this was an Iowa claim and the employer is relieved of benefit charges.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-23.43(9)a provides, in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer[,] which are based on benefit payments made by the paying state.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has an interest in maintaining public safety and the safety of its employees. It has put policies in place prohibiting the use or possession of alcohol while working to maintain the safety of others. The employer has presented credible evidence that the claimant was acting against the employer's best interest by having open beer cans and appearing intoxicated while working. This is misconduct without prior warning. The claimant would be disqualified from receiving benefits if this was an Iowa claim.

Since the employer would be relieved of charges based upon this fact scenario in an Iowa claim, it shall be relieved of charges on this combined wage claim. The claimant's qualification and eligibility shall be determined by the state in which the claim was filed.

**DECISION:**

The May 14, 2018, reference 01, decision is reversed. The account of the employer (account number 028930) shall not be charged. The claimant's qualification and eligibility shall be determined by the state in which the claim was filed.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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