

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL T CHERRY
Claimant

APPEAL NO. 17A-UI-12313-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 10/29/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed a representative's November 28, 2017, decision (reference 01) that concluded Nathaniel Cherry (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 20, 2017. The claimant participated personally. The employer participated by Lea Peters, Human Resources Generalist. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 4, 2016 as a full-time over-the-road driver. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment. The truck assigned to the claimant was equipped with a power divider. There was a red indicator light on the dash board alerting the driver when the power divider was engaged. Engaging the power divider at interstate speeds causes burn up.

On October 24, 2017, the claimant was driving and noticed a problem with his truck. He contacted the employer twice asking for assistance. The employer told him to drive the truck in to be examined. The claimant called a third time demanding a tow truck when smoke was coming from the tractor. The employer examined the tractor and found the claimant had been driving with the power divider engaged. No indicator light was illuminated alerting the claimant that the power divider had been engaged. The employer terminated the claimant for driving his truck on the interstate with the power divider engaged.

The claimant filed for unemployment insurance benefits with an effective date of October 29, 2017. The employer participated personally at the fact finding interview on November 27, 2017, by Lea Peters.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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:

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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer's equipment did not function properly and the claimant reported it. The employer hired a driver, not a mechanic. The claimant reported a problem and followed the employer's instructions. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 28, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs