

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH C COWAN**  
Claimant

**APPEAL NO. 07A-UI-09638-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 09/16/07 R: 12**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Joseph C. Cowan (claimant) appealed a representative's October 11, 2007 decision (reference 01) that disqualified the claimant from receiving benefits and held the account of Heartland Express, Inc. of Iowa (employer) was not subject to charge because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, telephone hearings were held on October 30 and November 1, 2007. The claimant participated in the hearings with his attorney, Robert Legislador. Lea Peters and Brian Janssen, a fleet supervisor, appeared on the employer's behalf. During the hearings, Employer Exhibits One through Four and Claimant Exhibits A and B were offered and admitted as 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant applied to work for the employer as a full-time regional truck driver in July 2005 because the employer advertised that regional drivers were home at least three out of four weekends per month, and sometimes more. (Claimant Exhibit A.) After the employer hired him, the claimant's initial fleet manager told the claimant that he would be home at least three of four weekends a month. This fleet manager described the weekend as meaning Saturday and Sunday. The claimant has children in school and his wife works, so Saturday and Sunday are the days the claimant spends quality time with his family. The claimant accepted employment with the understanding he would be home at least three out of four weekends per month.

Prior to September 14, 2007, the claimant's job was not in jeopardy. Prior to August 25, 2007, the employer arranged loads so the claimant was home on Saturday and Sunday three out of four weekends a month. The claimant was home the weekend of August 19. He was not at home the weekend of August 25, September 1 or 8. (Employer Exhibits One, Three, Four and Claimant Exhibit B.) The claimant wanted to be at home the weekend of September 15, Saturday and Sunday. (The claimant had been home between August 19 and September 14,

but not on Saturday or Sunday for significant time.) (Employer Exhibits One, Three, Four and Claimant Exhibit B.)

On September 14, the employer sent the claimant a message asking if he would pick up a load in Dyersville and deliver it to Chicago on September 15. In the past when the claimant had been dispatched to Chicago, the employer had not gotten him home. As a result of previous problems and because he had not been home during the week for a month, the claimant indicated he would not commit to this load. Janssen then contacted personally the claimant about taking the load to Chicago. When the claimant asked when he would be home, Janssen indicated this was being worked on. The claimant again declined to take a load to Chicago because he would not be able to be home with his family on Saturday and Sunday. The claimant and Janssen had a verbal confrontation about taking the load to Chicago. During this confrontation, the claimant became upset because Janssen was not listening to him. Janssen considered the claimant insubordinate and concluded the claimant was becoming more difficult because he had been pushing the employer to get him home during the weekends.

Sometime during the September 14 conversations, the employer told the claimant that the employer could no longer honor getting drivers home three out of four weekends a month. When the claimant was at a stalemate with Janssen, he asked to talk to Cliff. After talking to Cliff, the claimant noticed the Chicago trip had been voided and he was offered a load that was to be delivered in Oklahoma on Sunday night. This load allowed the claimant to be home on Saturday and Sunday. The claimant accepted this load. The claimant did not know the employer offered the claimant the Oklahoma trip so he could be directed to the Iowa City office. When the claimant came to the Iowa City office, the employer discharged him for refusing to take a load to Chicago.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Janssen may have told the claimant he would be discharged if he did not accept the Chicago load; but if Janssen made this statement, the claimant was upset and did not realize his job was in jeopardy. The claimant knew Janssen was not working with him and asked to talk to Cliff. Cliff appeared to listen to the claimant and shortly after talking to him, the Chicago trip was

voided for the claimant. The claimant incorrectly believed the issue was resolved after the employer asked if he would pick up a load in Cedar Rapids and deliver it to Oklahoma Sunday night. The claimant accepted this load. The claimant also incorrectly assumed everything was all right at that time.

The facts establish that prior to mid-August, the employer arranged loads so the claimant was home three out of four weekends a month. Since the claimant relied on the employer's assurance he would be home at least three out of four weekends a month, the employer's failure to send him on routes that did not allow him to be home to be with his family on Saturday and Sunday supports a conclusion that the claimant did not act unreasonably when he declined to take a load to Chicago that again prevented him from being home during the weekend. When the employer did not have a plan to ensure that the claimant would be home that weekend, the claimant declined the load.

The claimant did not know and the employer did not explain that after a business stopped using the employer for deliveries, the employer had problems arranging loads for the claimant to make that allowed him to get home during the weekend. The employer did not explain this problem to the claimant until September 14. The claimant's refusal to take the load to Chicago was not unreasonable in light of the fact he had not been home during a weekend for about a month.

Based on all the facts in this case, the employer established business reasons for discharging the claimant. The claimant, however, did not commit work-connected misconduct. As of September 16, 2007, he is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's October 11, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of September 16, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/kjw