

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEPHEN E TAGHON
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL 14A-UI-12961-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/16/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 10, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2015. Claimant participated with his son, Stephen Taghon, Jr. and was represented by James Gilliam, Attorney at Law. Employer participated through human resources representative, Dave Dalmasso and director JIT operations group, Doug Asbe.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an over-the-road driver from March 2, 2012, and was separated from employment on October 17, 2014, when he was discharged. On October 15 an unidentified motorist called the employer's toll-free number to report claimant by his tractor and trailer numbers at a service plaza in Ohio, standing outside between the tractor and trailer in his underwear with a roll of toilet paper in his hand. The employer verified the location and time via the truck's GPS system and confronted claimant on October 17. On October 15 claimant became ill with the flu including symptoms of vomiting and diarrhea while en route. He pulled off the interstate at the first available location because he was concerned about creating an unnecessary safety hazard by pulling onto the shoulder of the road. He notified the dispatcher he was ill and pulled into a rest area/service plaza and parked but was unable to make it inside the building to the restroom. He exited the tractor cab, vomited on ground and unintentionally soiled his pants to the degree he was unable to go inside the building to clean up. He was concerned about the employer's standard of cleanliness for the interior of the tractor cabs and took steps to hide himself from the public by standing in between the tractor and trailer to clean himself and change before going inside to finish cleaning up. When inside the building he became ill again. No one approached him or indicated they were offended. The employer applied its policy for drivers to conduct themselves in a professional manner in making the

decision to discharge. It had not previously warned claimant his job was in jeopardy for any similar reasons.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The conduct for which claimant was discharged was merely an isolated incident of becoming violently ill in an inconvenient time and place, which was well outside of the claimant's control. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). While this was not a situation involving an absence, clearly the employer has not established any form or degree of volition, whether he stayed in the cab, was outside, or in the building restroom. Claimant took reasonable and valiant steps under miserable circumstances to conceal himself from view and clean up before he could even proceed to the building restroom. The employer's expectations, in hindsight or otherwise, were not reasonable. It has not established even a scintilla of misconduct. Benefits are allowed.

DECISION:

The December 10, 2014, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css