

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L ROGERS

Claimant

APPEAL NO. 09A-UI-08916-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

**Original Claim: 05/10/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed a representative's June 12, 2009 decision (reference 01) that concluded David L. Rogers (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2009. The claimant participated in the hearing. Lea Peters, a human resource generalist, appeared on the employer's behalf. 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 started working for the employer on August 30, 2006. The claimant worked as a full-time over-the-road driver.

The claimant received his first warning on November 26, 2008, when he inadvertently overslept. The employer gave him a warning for failing to communicate that he had overslept and would not be able to make a timely delivery. The claimant admitted he should have informed the employer when he woke up from oversleeping, but did not. On January 30, 2009, the employer gave the claimant another warning for failing to accurately log his hours. The claimant understood that if he did not accurately log his hours from that day on, the employer would discharge him.

On May 6, the claimant accepted a load he was to pick up in Louisiana. The claimant's last scheduled delivery was close to the load the employer asked him about. When the claimant accepted the load, he informed the dispatcher or understood the dispatcher knew he only had five hours before he had to take a mandatory break. The claimant accepted the load so the employer could get the load on the employer's books. Although the pickup for the load was scheduled for 8:30 p.m., the claimant arrived at 5:45 p.m. The claimant was unable to get the

customer to load his truck early. By the time his truck was loaded and the claimant could leave, it was 10:30 p.m. The claimant was to have started his mandatory ten-hour break an hour earlier. As soon as the claimant was able to leave the dock, the claimant left and started his break.

A few minutes before 8:00 a.m., the claimant's dispatcher sent the claimant a message and asked why he had not moved. The claimant responded that he had to take a mandatory break that was over at 8:30 a.m. The claimant had not contacted the employer before May 7 because he assumed the employer knew he had to take a mandatory break and planned to drive as many hours and miles as possible before he had to take another break. When the claimant had a better idea how far he could drive, he planned to contact the employer so the employer could arrange for another driver to relay with the claimant and take the load to Kansas City if it was necessary to do that. The relay driver that picked up the load from the claimant in Little Rock, Arkansas, made the delivery to Kansas City an hour late.

The employer discharged the claimant on May 12 because he failed to notify the employer about his mandatory break, which the employer concluded made the delivery an hour late.

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).

The facts show the claimant did not have any documented problems with his work until late November 2008. In late November, the claimant admitted he made a mistake and should have notified the employer when he overslept, but did not. In early May, the claimant understood the dispatcher knew how many hours he had available to work before he had to take a mandatory break. Since the dispatcher did not testify, the claimant's testimony is not refuted. The fact the dispatcher told him the morning of May 7 that he should have started his mandatory break at 5:45 p.m. instead of 10:30 p.m. supports the claimant's testimony that the dispatcher knew how many hours the claimant had available to work when the load was assigned and the claimant accepted it. Based on the claimant's conclusion that the dispatcher knew he had to take a mandatory break, the claimant did not contact the employer the evening of May 6. The claimant may have used poor judgment when he did not contact the employer the evening of May 6, but the facts do not establish that he intentionally disregarded the employer's interests. Instead, he

planned to drive as far as he could. If he had to take another break and could not get the load to Kansas City on time, he then would have contacted the employer about arranging for a relay driver to take the load to Kansas City. Notifying the employer later on Saturday may or may not have made it more difficult to find a relay driver.

The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 10, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's June 12, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 10, 2009, the claimant is qualified to receive 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