

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEJANDRO ANDALUZ**

Claimant

**APPEAL NO. 10A-UI-09077-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 05/09/10**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 22, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 11, 2010. Claimant Alejandro Andaluz participated. Lea Peters, Human Resources Generalist, represented the employer and presented additional testimony through John Clark, Operations Manager. Exhibits One, Two and Three were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Alejandro Andaluz was employed by Heartland Express as a full-time over-the-road regional truck driver from February 2007 until May 7, 2010, when Dan Dietter, Terminal Manager, discharged him from the employment. Mr. Andaluz was assigned to the employer's southeast region, but would occasionally be assigned a load that would take him outside his assigned region.

The final incident that prompted the discharge was Mr. Andaluz's refusal of a load on May 4, 2010. The employer wanted Mr. Andaluz to take a load from North Carolina to Illinois. Mr. Andaluz was to pick up the load on May 5 and deliver the load on May 6. Mr. Andaluz was paid according to the number of miles he drove. Mr. Andaluz refused the load because he thought taking the load would prevent him from hauling the number of miles he was supposed to get during a week. At the time of hire, the employer had represented to Mr. Andaluz that he could expect to average 2,000-2,200 miles per week. On May 4, Mr. Andaluz had a conversation with his fleet manager via the QUALCOMM system. The employer has provided only a portion of that correspondence for the hearing. See Exhibit Three. Mr. Andaluz twice rejected the load due to the low number of miles the load would provide, the employer directed him a third time to take the load. In an attempt to provide a reason the employer might acknowledge and accept, Mr. Andaluz responded that he did not to take the load because it would take him outside his assigned region. Mr. Andaluz was in fact not averse to hauling an

occasional load outside his assigned region. During the last week for which Mr. Andaluz hauled for the employer, he ended up driving 1,443 miles. This included one final load the employer assigned after it decided to discharge Mr. Andaluz, but before the employer notified Mr. Andaluz of the discharge.

The employer had issued one prior reprimand to Mr. Andaluz for refusing a load in December 2007. Mr. Andaluz refused that load because he thought it did not offer sufficient miles.

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

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge

considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence indicates that the employer was reasonable in requesting that Mr. Andaluz haul the load in question and that Mr. Andaluz was reasonable in refusing to haul the load in question. The employer wanted the load hauled. Mr. Andaluz wanted to make the income the employer had previously communicated he could expect to make by obtaining an alternative load with greater miles involved. The employer failed to present testimony from the fleet manager with whom Mr. Andaluz corresponded regarding the load in question. The employer elected to submit only a portion of the QUALCOMM correspondence between Mr. Andaluz and the fleet manager. The employer had the ability to present more direct and satisfactory evidence, but elected not to. The administrative law judge noted that the operations manager could not even remember the name of Mr. Andaluz's final supervisor. This deficiency concerning such basic information calls into question the general reliability of the operations manager's testimony. The administrative law judge noted that Mr. Andaluz's demeanor during the hearing did not at all comport with the employer's assertion that he routinely balked at authority. Mr. Andaluz presents himself as a reasonable, articulate individual. The employer provided little reason to justify discounting Mr. Andaluz's testimony. The evidence does not indicate any continued refusal to follow reasonable employer directives.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Andaluz was discharged for no disqualifying reason. Accordingly, Mr. Andaluz is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Andaluz.

**DECISION:**

The Agency representative's June 22, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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