

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A LEWIS

Claimant

APPEAL NO. 14A-UI-02210-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 02/02/14

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. filed a timely appeal from a representative's decision dated February 21, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 18, 2014. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Sandy Matt, Human Resource Specialist. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Mark Lewis was employed by CRST Van Expedited, Inc. from November 15, 2012 until December 30, 2013 when he was discharged for violating the company policy against excessive speeding. Mr. Lewis was employed as a full-time over-the-road tractor trailer driver and was paid by the mile. His immediate supervisor was Billy Perkins.

On December 4, 2013, Mr. Lewis received a traffic citation for travelling 11 to 14 miles over the posted speed limit by the Oklahoma State Highway Patrol in Texas County, Oklahoma. The claimant was cited for traveling 58 miles per hour in a 45 mile per hour zone. On December 29, 2013, CRST Expedited, Inc. received a copy of the Oklahoma traffic citation that had been issued to Mr. Lewis. The claimant was discharged because he had violated a strict company policy which prohibits company drivers from speeding in excess of 10 miles an hour while driving a company tractor trailer unit. Mr. Lewis was aware of the strict policy and had signed an acknowledgement of the receipt of the policy on November 12, 2012. (See Employer's Exhibit B). The claimant was aware that violating the policy subjected him to discharge from employment. The employer was not aware of any extenuating circumstances regarding the

claimant's violation of the company's excessive speeding rule. Based upon the strict application of the rule, Mr. Lewis was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 discharge of an employee may not necessarily be 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).

In the case at hand Mr. Lewis was discharged when the employer became aware that he had violated the company's strict prohibition against speeding ten or more miles per hour above posted speed limits while operating a company tractor trailer unit. The claimant was aware of the strict policy and had signed an acknowledgement of the policy. The evidence in the record

establishes that Mr. Lewis was operating a company tractor trailer unit at 58 miles per hour in a 45 mile per hour zone in Texas County, Oklahoma in violation of the rule. The employer was aware of no extenuating circumstances that were provided by the claimant to justify his violation of the company's speeding prohibition. The policy specifically provides that employees are subject to discharge for violation of the rule. There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

In this case, the claimant has received benefits in the amount of \$245.00 since filing a claim with an effective date of February 2, 2014 for the week ending February 20, 2014. As there is no information in the administrative record to establish whether the employer participated in the fact-finding interview or made a first-hand witness available for rebuttal, the issue of whether the claimant must repay the overpayment or whether the employer will be charged for the overpayment due to participation at fact finding is remanded to the Claims Division for determination.

DECISION:

The representative's decision dated February 21, 2014, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The claimant has been overpaid unemployment benefits in the amount of \$245.00. The issue of whether the claimant must repay the \$245.00 overpayment of unemployment insurance benefits or the amount should be charged to the employer due to participation at fact finding is remanded to the Claims Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css