

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH J LEWIS
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL 19A-UI-08758-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/06/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant, Kenneth J. Lewis, filed an appeal from the October 31, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 3, 2019. The hearing was held jointly with 19A-UI-08759-JC-T. The claimant participated personally. The employer, Crst Van Expedited Inc., participated through Jamie Christenson, human resources specialist.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as an over-the-road truck driver and was separated from employment on July 26, 2019, when he was discharged.

The claimant worked as a team driver, meaning that he shared a truck with another driver. When one driver slept, the other would drive hours in accordance with DOT guidelines. The claimant had been recently paired with a new driver.

The employer asserted the claimant abandoned his driver and a high priority load on July 26, 2019. While on his route that day, the claimant was sleeping while his co-driver was driving. The claimant awoke and realized the truck was parked outside of a casino. The claimant’s co-driver approached the vehicle from outside, walking sideways, with alcohol in hand, slurring his words. The claimant explained that he could not bring alcohol into the truck. The co-driver told the claimant he was a “grown ass man”. The claimant notified the employer via its electronic

communications of the matter. While the claimant was operating the truck, the driver continued to engage, becoming combative as he cursed and threatened the claimant with physical harm. The claimant pulled off to a truck stop to allow his co-driver to use a restroom and when he exited the truck, the claimant left him and continued driving. The claimant felt the truck stop was the safest place he could leave the driver.

The claimant notified the employer, who told stated that the claimant must go back and retrieve the driver. The claimant refused and instead drove to the nearest Greyhound station to wait for his load to be picked up by other drivers. Because of federal law, the claimant was limited in the hours he could drive. The claimant stayed with the truck until the other drivers picked up the load, and then purchased a one-way bus ticket home. He was subsequently fired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was assigned a co-driver who on July 26, 2019, tried to board the employer truck with alcohol, while already being intoxicated. When the claimant told him no, the driver became combative. The claimant was uncomfortable with him in the vehicle and drove him to a truck stop and left him there, while notifying the employer of the situation. The claimant refused to pick the driver back up when directed by the employer, which led to his firing.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The administrative law judge recognizes the employer's concerns of abandoning a load or fellow co-workers. However, the administrative law judge is persuaded the claimant was reasonable in refusing to allow the driver to be in the vehicle when he was visibly intoxicated and combative. Based on the circumstances, the driver could have reasonably engaged in dangerous behavior by trying to drive the vehicle or getting physical with the claimant after threatening him. This conduct would have placed the claimant and motoring public in harm, his legitimate concerns does mitigate his non-compliance with the employer's directive. Further, the claimant communicated with the employer what the situation was, and waited for new drivers to secure his load before leaving.

While not ideal, the claimant's decision to leave the driver at a truck stop (as opposed to the side of the road) was reasonable given the unique circumstances. The administrative law judge is not persuaded the claimant's one time refusal to pick up his intoxicated, combative co-worker would constitute disqualifying job-related misconduct.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The October 31, 2019, (reference 01) unemployment insurance decision is reversed. The 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, provided he is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

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