

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA M JEWELS**

Claimant

**CRST FLATBED REGIONAL INC**

Employer

**APPEAL NO. 12A-UI-04546-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/11/12**

**Claimant: Respondent (1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated April 11, 2012, reference 02, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 16, 2012. Claimant participated. The employer participated by Sandy Matt, the human resources specialist, and Scott Randall, the director of safety. The record consists of the testimony of Sandy Matt; the testimony of Scott Randall; the testimony of Angela Jewels; and Employer's Exhibits 1-3.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a transportation company. The claimant was hired on January 21, 2011, as a full-time over-the-road driver. She drove in tandem with a partner. Her last day of work was January 6, 2012. She was terminated on January 12, 2012.

The claimant's partner was selected for a random drug test and the claimant was notified to drive to a medical clinic where the partner could be tested. The claimant did so. The employer received a call from an individual who said that he was approached first by the claimant's partner and then the claimant. This individual was asked if he would sell them some of his urine because the partner had a drug test and knew he could not pass the test.

Scott Randall, the director of safety, conducted an investigation and concluded that the information from the call was accurate. He terminated the claimant for abdicating her responsibility to report her partner's drug use and for aiding and abetting her partner's efforts to purchase urine for the drug test. The claimant denied having anything to do with the purchase of urine.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will follow all work rules and federal/state laws applicable to his or her job. The employer has the burden of proof to establish misconduct.

There is insufficient evidence in this record to establish misconduct. The reason for this conclusion is that the employer provided only hearsay evidence that the claimant was involved in trying to purchase urine for her partner so that he could pass a drug test. The claimant testified under oath that she did not have anything to do with that and she had simply driven him

to the clinic as requested by the employer. The administrative law judge has some reservations about this testimony and is a bit troubled about the inconsistency between what she told Mr. Randall and her testimony at the hearing. She said that she was confused when Mr. Randall questioned her.

According to Mr. Randall, the partner admitted to drug use and an effort to purchase urine. The partner did not testify at the hearing and there was no written statement from him. The individual that was approached to sell urine was not identified and no statement from him was in the record. The administrative law judge had only the live testimony of the claimant and she categorically denied having done anything wrong. The employer provided only testimony from Mr. Randall and his knowledge was based on what he had been told by others. While hearsay evidence is admissible in administrative hearings, its probative value is limited when the claimant provides live testimony under oath that the incident or event did not occur. The administrative law judge cannot fully weigh the credibility of the claimant's testimony under these circumstances.

Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code Sec. 17A.14(1). Allegations of misconduct 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).

The Iowa Court of Appeals set forth a methodology for making the determination as to whether hearsay rises to the level of substantial evidence. In Schmitz v. Iowa Department of Human Services, 461 N.W.2d 603, 607-608 (Iowa App. 1990), the Court required evaluation of the "quality and quantity of the [hearsay] evidence to see whether it rises to the necessary levels of trustworthiness, credibility and accuracy required by a reasonably prudent person in the conduct of their affairs." To perform this evaluation, the Court developed a five-point test, requiring agencies to employ a "common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better evidence; (4) the need for precision; (5) the administrative policy to be fulfilled." Id. at 608.

Since the employer was unable to furnish available evidence to corroborate the allegation of misconduct, the employer has not met its burden of proof to show misconduct. Benefits are therefore allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated April 11, 2012, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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