

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A DINGMAN
Claimant

APPEAL NO. 13A-UI-03153-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 01/13/13
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated March 4, 2013, reference 01. The decision allowed benefits to the claimant, James Dingman. After due notice was issued, a hearing was held by telephone conference call on April 10, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Specialist Sandy Matt.. Exhibits One, Two and Three were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

James Dingman was employed by CRST from December 15, 2011 until October 24, 2012 as a full-time over-the-road truck driver. At the time of hire he received a copy of some of the employer's policies. It stated a violation of any of the listed policies would result in discharge or being required to attend a defensive driving course. One of the policies prohibits speeding in a construction zone. The claimant signed the acknowledgement.

The employer considers the listed policies and prohibited actions to be critical as it is striving for a top safety rating among commercial carriers. Any of the listed conduct could result in points being taken away from a driver's CSA score, and that would inhibit the employer's ability to get the safety score.

On October 12, 2012, Mr. Dingman was waved over by a DOT officer for speeding in a construction zone. The report issued was not a citation for speeding but a warning. The claimant reported the incident to the employer who then contacted the Indiana authorities and asked for a copy of the pertinent paperwork. The claimant also provided a copy at the earliest opportunity.

On October 24, 2012, the claimant was notified by Fleet Manager Heather Coenen he was being fired. He argued that he was not cited for speeding, only warned, but the policy does not require a citation. The prohibition is that there is to be no speeding in a construction zone.

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 claimant was discharged because he had been warned by an Indiana DOT employee for speeding in a construction zone. The authority did not consider the incident to rise to the level for issuing a citation. The administrative law judge acknowledges the employer is not bound by the determination of others as to what constitutes a dischargeable offense.

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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351

N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The administrative law judge cannot conclude that the single incident of a warning rises to the level of misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of March 4, 2013, reference 01, is affirmed. James Dingman is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css