

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL F REED
1346 CALVIN DR
BURTON MI 48509

CRST INC
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-05433-HT
OC: 04/24/02 R: 12
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated May 12, 2005, reference 01. The decision allowed benefits to the claimant, Michael Reed. After due notice was issued a hearing was held by telephone conference call on June 9, 2005. The claimant participated on his own behalf and was represented by Attorney Jeff Tronvold. The employer participated by Human Resources Specialist Sandy Matt and Operations Manager Bill McGuire.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Michael Reed was employed by CRST from April 7,

2004 until April 22, 2005. He was a full-time over-the-road truck driver. The claimant had received a copy of the employer's drug policy which notifies employees that they are subject to random drug tests. The policy further states an employee will be discharged for failing to submit to a test.

On April 22, 2005, Mr. Reed was notified at 12:36 p.m. by Fleet Manager Liz Titus he had been selected for a random drug test. He was to report to U.S. Healthworks in Carlisle, Pennsylvania, to give a sample. He did not leave the terminal for about 45 minutes and then proceeded to Carlisle, which was 10 or 15 miles away. However, he became stuck in traffic as a large auto show was occurring in the area. Police detoured all traffic for a period of time.

The claimant waited in a truck stop for about an hour and around 4:00 p.m. called Operations Manager Bill McGuire to say he was delayed due to the traffic. He was not able to make it to U.S. Healthworks until 5:45 p.m., but the facility did not take samples after 5:30 p.m. Mr. Reed contacted Mr. McGuire again and said he could go to a local hospital to give the sample as it was open 24 hours, but the employer indicated this was not acceptable. The claimant was notified to return the truck to the terminal and was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for failing to submit to a drug test. However, the question here is whether his failure was a willful and deliberate act of misconduct. The employer has not rebutted the claimant's assertion he was delayed by traffic and detours and it was not an intentional refusal to take the test. Circumstances beyond his control prevented him from appearing at the clinic before 5:00 p.m., although he was willing to give the sample elsewhere that day. There is no evidence of willful misconduct or negligence and disqualification may not be imposed.

DECISION:

The representative's decision of May 12, 2005, reference 01, is affirmed. Michael Reed is qualified for benefits, provided he is otherwise eligible.

bgh/pjs