

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD G FITCHHORN
Claimant

APPEAL NO. 08A-UI-11158-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 10/26/08 R: 12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Richard G. Fitchhorn filed a timely appeal from an unemployment insurance decision dated November 20, 2008, reference 02, that disqualified him for benefits. After due notice was issued, a telephone hearing was held December 12, 2008, with Mr. Fitchhorn participating. Sandy Matt participated for the employer, CRST Van Expedited, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

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: Richard G. Fitchhorn was employed by CRST Van Expedited, Inc., from April 27, 2006, until he was discharged October 15, 2008. Mr. Fitchhorn failed a test mandated by federal law. His own voluntary actions put him in a position in which he could fail the required test. The employer was not allowed to maintain Mr. Fitchhorn's employment following the failure.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence record establishes that the claimant was discharged for misconduct in connection with his employment. 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.

An individual whose voluntary behavior makes it unlawful for the employer to maintain the individual's employment is generally considered to have been discharged for misconduct in connection with the individual's employment. The evidence in this record establishes that Mr. Fitchhorn's personal choices led to his failing the mandatory test. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated November 20, 2008, reference 02, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw