

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

RONALD L MCNEIL
450 SHENANDOAH TRL APT 5-A
AUSTELL GA 30168

CRST INC
c/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-06183-RT
OC: 04-25-04 R: 12
Claimant: Respondent (2)

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 for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, CRST, Inc., filed a timely appeal from an unemployment insurance decision dated May 26, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Ronald L. McNeil. After due notice was issued, a telephone hearing was held on June 28, 2004, with the claimant participating. Sandy Matt, Human Resources Specialist, and Chris Sulzner, Fleet Manager, participated in the hearing for the employer. Lisa Laveck, Intern, listened in on the hearing. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a full-time over-the-road truck driver from March 27, 2003 until he was discharged on April 21, 2004. The claimant was discharged for improper use of employer's equipment, namely the truck, unauthorized person in the truck, disconnecting the qualcom, and falsifying logs. Concerning the improper use of the employer's truck, on or about April 20, 2004, the claimant was on home time or down time and the truck was to have been left at the terminal and should not have been moving at all. Nevertheless, without permission, the claimant took the truck home. The employer has specific rules in its handbook, a copy of which the claimant received and for which he signed an acknowledgement and of which he was aware, providing that personal use of a truck is grounds for discharge. The claimant used the truck because his car broke down and claimed that he had no other alternatives. During this period of time, the claimant had also disconnected the qualcom for 24 hours, which is a device that allows the employer to communicate with the drivers. The qualcom is never to be disconnected. A student intern informed the employer that the claimant also had a third party in the truck and carried a second set of books but the claimant adamantly denied these two. On or about April 13, 2004, and before the claimant used the truck for his personal use, the claimant had been warned orally not to use the truck for personal use and was further warned that such use could result in his discharge. Pursuant to his claim for unemployment insurance benefits filed effective April 25, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,576.00 as follows: \$322.00 per week for eight weeks from benefit week ending May 1, 2004 to the benefit week ending June 19, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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 administrative law judge concludes that the claimant was discharged on April 21, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that on or about April 20, 2004, the claimant used the employer's truck for personal use while on home time or down time when the truck is not supposed to be moving. The employer was able to determine this by using its global positioning satellite system (GPS) and noticed that the truck was moving while it was supposed to be stopped on home time. The truck is supposed to be left at the terminal during this down time but the claimant did not do so. The claimant had no permission to use the truck for personal use. The claimant conceded that he used the truck for personal use. The employer has a policy that prohibits such use and further provides that such use can be grounds for discharge. The claimant was aware of this. The claimant testified that he did so because his car broke down and he had no other alternatives but the administrative law judge is not convinced that the claimant had no other alternatives. At the very least, the claimant should have asked the employer for permission. He did not do so. Further, the administrative law judge concludes that during this time the claimant turned off his qualcom for 24 hours while he was using the truck for personal use. The claimant denied this and testified that he turned off his qualcom because he was not using the truck and he was out of the truck and watching movies. The administrative law judge does not believe that the claimant would be out of the truck and watching movies for 24 hours and does not understand why the qualcom would have been disconnected in any event. The employer prohibits the disconnecting of the qualcom. The claimant had just received an oral warning informing him that he was not to use the truck for personal use and that such use could result in his discharge. Accordingly, the administrative law judge concludes that claimant's personal use of the truck and the disconnecting of the qualcom after receiving an oral warning about this behavior are deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and, at the very least, are carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. The employer's witnesses testified that the claimant also had an unauthorized person in his truck and he falsified logs by having a second set of log books. However, the employer's evidence for these two was hearsay and the claimant adamantly

denied those and the administrative law judge concludes that there is not a preponderance of the evidence that these two acts were actually committed by the claimant. Nevertheless, the administrative law judge concludes that the claimant is disqualified because of his use of the employer's truck for personal business and the disconnecting of the qualcom as noted above.

Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,576.00 since separating from the employer herein on or about April 21, 2004 and filing for such benefits effective April 25, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 26, 2004, reference 01, is reversed. The claimant, Ronald L. McNeil, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$2,576.00.

tjc/kjf