

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM S SHAW
Claimant

APPEAL NO. 13A-UI-11931-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**OC: 09/22/13
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 10, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 15, 2013. Claimant participated. The employer submitted documents in lieu of participating in the hearing, which documents were received into evidence as Exhibits One through Six. The employer did not request postponement of the hearing.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Shaw was employed by CRST Van Expedited Inc. as a full-time over-the-road truck driver from 2010 until August 29, 2013, when the employer discharged him from the employment. The discharge arose from a driver/vehicle examination report generated in connection with an inspection that took place on August 10, 2013 in the state of Kansas. In connection with that inspection, the Kansas Highway Patrol alleged on the examination report that Mr. Shaw had been speeding 64 mph in a 45 mph speed zone. The examination report indicated on its face that the driver was required to return the examination report to the employer/carrier and that the employer was supposed to sign the document and return it to the Kansas Highway Patrol within 15 days of the inspection. Mr. Shaw denies that he was exceeding the posted speed limit at the time he was stopped in Kansas. Mr. Shaw did not receive a citation for speeding in connection with the August 10, 2013 inspection in Kansas.

The employer has a written policy that states as follows, "All moving violations, including warning tickets and inspections must be reported to Safety immediately." [Underlining is original to the policy.] The policy is contained in the over-the-road handbook that was provided to Mr. Shaw in July 2010. At that time, Mr. Shaw signed his acknowledgment of receipt of the handbook. Mr. Shaw provided a copy of the inspection report to the employer 13 days after the inspection occurred.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty 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 evidence in the record establishes that Mr. Shaw was negligent in failing to provide the inspection report form to the employer in a timely manner after the inspection occurred. The evidence indicates that Mr. Shaw was not cited for a moving violation, speeding. The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to prove that Mr. Shaw's delay in providing the inspection report to the employer went beyond negligence. One incident of ordinary negligence would not be enough to establish misconduct in connection with the employment. The employer had the ability to present evidence through witness testimony, but elected not to do that.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Shaw was discharged for no disqualifying reason. Accordingly, Mr. Shaw is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's October 10, 2013, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs