

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL E ROOT
Claimant

APPEAL NO. 08A-UI-00437-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

OC: 12/09/07 R: 12
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated January 3, 2008, reference 01. The decision allowed benefits to the claimant, Randall Root. After due notice was issued, a hearing was held by telephone conference call on January 29, 2008. The claimant participated on his own behalf. The employer participated by Human Resources Specialist Sandy Matt. Exhibits One, Two, Three, and Four 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:

Randall Root was employed by CRST from November 9, 2006 until November 13, 2007, as a full-time over the road truck driver. He received a copy of the employee handbook at the time of hire.

On November 12, 2007, the claimant had picked up a driver trainee in Georgia and the trainee reported to Lead Driver Manager George Brandmayr the claimant had made u-turns in the truck. CRST prohibits u-turns and subjects the driver to disciplinary action up to and including discharge. Mr. Brandmayr called the claimant and interviewed him over the phone about the allegations.

Mr. Root did make a “circle” in the parking lot of the Greyhound bus station where he had been sent to pick up the trainee. The area around the bus station is not a truck route, with narrow streets, but dispatch had sent him to that location even though he had informed the dispatcher it was not a truck route. There was no other way he could exit the bus station parking lot without having to circle around. The trainee alleged another u-turn, but it was only a sharp turn at an intersection. Because it was not a truck route and the streets were narrow, Mr. Root had run up on the curb while turning the truck.

The claimant also admitted to using a prescription pain killer for a period of time between December 2006 and January 2007, prescribed by his doctor for back pain. He stated he only took it after he was off duty and was never under the influence while driving.

Mr. Brandmayr sent an e-mail to Freight Manager Jake Folger about the interview, with the recommendation the claimant be discharged. Mr. Folger notified Mr. Root by phone on November 13, 2007, he was fired.

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer did not present any testimony from eyewitnesses to the events or even from the individual who interviewed the claimant about the allegations. These people are still employed by CRST. The claimant denied making illegal u-turns on the date in question or being under the influence of controlled substances.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more

persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of January 3, 2008, reference 01, is affirmed. Randall Root is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw