

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN K ANDRUS

Claimant

APPEAL NO. 12A-UI-01587-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 12/11/11

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 7, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 6, 2012. Claimant participated with former co-driver Leon Tapia. Sandy Employer CRST participated through human resources specialist Sandy Matt. Employer's Exhibit One was admitted to the record. Claimant's Exhibit A was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road driver from December 2010 and was separated from employment on December 5, 2011. On November 29, 2011 he was ticketed for speeding 55 mph in a 45 mph construction zone. (Claimant's Exhibit A) He was allowed to continue driving to California and back before being notified of the termination. He entered a plea of not guilty on December 13, 2011. (Claimant's Exhibit A) The employer requires automatic discharge without prior warning for a moving violation according to the Federal Motor Carrier Safety Regulations. (Employer's Exhibit 1) The November 29 citation was dismissed on January 10, 2012. (Claimant's Exhibit A) He had received a warning ticket for failure to yield on March 11, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Inasmuch as the citation for which claimant was discharged was dismissed and there were no other incidents of alleged misconduct, the employer has not met the burden of proof to establish a current or final act of misconduct. Accordingly, benefits are allowed.

DECISION:

The February 7, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided he is otherwise eligible.

Any dispute the parties have about missing wages or wages withheld may be addressed through Iowa Workforce Development (IWD) Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs