

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM SENIORS III
Claimant

APPEAL NO: 14A-UI-04837-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 04/06/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 30, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 29, 2014. The claimant participated in the hearing. Sandy Matt, Human Resources Specialist participated in the hearing on behalf of the employer. Kim Bateman, Human Resources Specialist and Ashley Fagan, Human Resources Supervisor, observed the hearing.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for CRST Van Expedited from February 22, 2013 to October 25, 2013. The employer believed the claimant quit his job. The claimant testified he learned his employment was terminated from a co-worker and that was confirmed when he called the employer.

The claimant originally signed an eight-month contract and agreed to fund the claimant's training. On October 18, 2013, as the end of the eight-month period approached, Tim Higgins, Fleet Manager with the Refrigerated Line, asked the claimant if he would transfer over to the refrigerated line as the claimant had been a dry van division driver and the refrigerated line paid more and offered more work. The claimant stated he would love to work on the refrigerated line and asked Mr. Higgins to send him a wage verification sheet, which he did, and the claimant signed and returned that document October 18, 2013. The claimant spoke to Dominic Benatti, a Fleet Manager on the dry van division, and explained the situation. Mr. Benatti told the claimant he could no longer drive for the dry van division because he had switched to the refrigerated line and then sent the claimant three lists containing the names of potential co-drivers. The claimant called and interviewed the 20 to 30 drivers on the first two lists but did not find a compatible driver he would have to trust, work with and effectively live with on those lists. On October 25, 2013, the claimant's home time started and he received his third list of names when he found a

co-driver he felt comfortable with. He called Mr. Benatti to tell him he was now ready to formally switch to the refrigerated line and Mr. Benatti said he would talk to the claimant's new co-driver's fleet manager and get back to the claimant. That was the last time the claimant spoke to Mr. Benatti. The claimant was waiting for his co-driver to pick him up in Atlanta, Georgia, and believed it was taking some time for the employer to route him there. He started trying to call Mr. Benatti after not hearing from him for three days but his phone would not allow the claimant to leave a message. The claimant then called another fleet manager but was told to call Mr. Benatti because he was familiar with the situation. The claimant also tried to reach Mr. Higgins without success. He called his new co-driver November 20, 2013, to tell him what the situation was and the co-driver told him that he had been informed the claimant's employment was terminated. The claimant called Mr. Higgins and was able to reach him November 20, 2013, and was told his employment was terminated because he did not pick a co-driver fast enough.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was moving to the refrigerated line and had to interview co-drivers as that relationship is a very important one given the amount of time the team spends together and the trust they need to have in each other. The claimant received two lists of co-drivers from Mr. Benatti before he began his home time October 25, 2013, and had interviewed and found a co-driver on the third list by the date his home time commenced. He was never able to reach Mr. Benatti again after notifying him he had selected a co-driver and because Mr. Benatti told him he was going to talk to the new co-driver's fleet manager at that time and the claimant believed he had to be routed to Atlanta, the claimant waited to begin his new position but called the employer frequently in an attempt to find out what the status of his transfer was and when he would start.

While the process did drag on, it does not appear that was the fault of the claimant. He had selected a new co-driver by the first or second day of his home time and talked to Mr. Benatti and was effectively told he would do what needed to be done on the employer's end to set up the transfer. The claimant repeatedly called the employer while waiting to hear from it and believed the delay was the result of having to route his new co-driver to Atlanta to pick him up. The claimant had no intention of quitting his job as reflected by his actions.

Under these circumstances, the administrative law judge concludes the claimant did not voluntarily quit his job but his employment was terminated and the evidence does not establish misconduct on the part of the claimant. Therefore, benefits are allowed.

DECISION:

The April 30, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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