

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 H BARNES
11213 CITRUS AVE
FONTANA CA 92337

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

Appeal Number: 04A-UI-00824-B4T
OC: 11/09/03 R: 12
Claimant: Appellant (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

STATEMENT OF THE CASE:

Ronald H. Barnes appealed from an unemployment insurance decision dated January 14, 2004, reference 01, that held, in effect, the claimant violated a known company rule and was discharged for misconduct in connection with his employment at CRST Inc. on September 19, 2003. Unemployment insurance benefits were denied.

A telephone conference hearing was scheduled and held on February 9, 2004 pursuant to due notice. Ronald H. Barnes participated. Sandy Matt, Human Resource Specialist participated on behalf of the employer. Ryan Grytdahl, Fleet Manager, was listed to participate as a witness but did not arrive at the office location where he was scheduled to report in time for the hearing. Ryan Grytdahl did not participate.

Official notice was taken of the unemployment insurance decision bearing reference 01 together with the pages attached thereto (5 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Ronald H. Barnes was employed with CRST, Inc. on October 16, 2002 as a full time over-the-road driver. The employer had adopted a driver's handbook. The claimant acknowledged receipt of the handbook at or about the time of his hire.

The employer had apparently adopted some kind of a random drug test selection process which was not established on the record. The Department of Transportation rules allow a random drug test selection to be made. Sandy Matt, Human Resource Specialist was not familiar with the procedures, nor did she establish that the Department of Transportation rules were complied with.

Apparently, the claimant was in Phoenix, Arizona and received a message while in his truck. The claimant was designated to take a test at a location in Phoenix, Arizona. Subsequently, the claimant held a conversation with Ryan Grytdahl, Fleet Manager, indicating that he had been around people who were using drugs in the past two days and was reluctant to take a test at that time. The claimant did not take the test as requested by Ryan Grytdahl, Fleet Manager.

The employer has failed to establish that the testing requirements of the Department of Transportation were identified for the record or that the employer's process in scheduling the claimant for a drug test followed those rules. Subsequently, on or about October 19, 2003, the claimant was informed to leave the truck and not drive any longer.

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.

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 employer has failed to identify the Department of Transportation drug testing rules for a random drug test and has failed to establish that they had followed the drug test requirements of the department or of the driver handbook, which allegedly had been violated by the claimant. The employer has failed to meet the burden of proof required to establish that the claimant refused to take a random drug test that was properly scheduled for him.

The record does not otherwise establish misconduct as defined by the foregoing section of the Iowa Administrative Code.

The administrative law judge concludes that Ronald H. Barnes was discharged from his employment with CRST, Inc. on or about October 19, 2003 for no disqualifiable reason within the intent and meaning of Iowa Code Section 96.5-2-a.

DECISION:

The unemployment insurance decision dated January 14, 2004, reference 01, is reversed. Ronald H. Barnes was discharge from his employment with CRST, Inc., on or about September 19, 2003 for no disqualifiable reason and unemployment insurance benefits are allowed provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law.

kjf/b