

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM P TONON**

Claimant

**APPEAL NO: 13A-UI-10226-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**

Employer

**OC: 07/28/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 21, 2013, reference 01, that held he was discharged for misconduct on November 27, 2012, and benefits are denied. A telephone hearing was held on October 2, 2013. The claimant participated. Sandy Matt, HR Specialist, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on March 30, 2012, and last worked for the employer as a full-time over-the-road driver on November 27, 2012. Claimant received the employer policy and he participated in driver orientation.

On October 20 claimant struck a wooden fence in a FedEx lot in San Bernadino, California that was reported to the employer. The damage was minimal. The employer safety review committee concluded it was a preventable accident.

On November 13 claimant ignored a no truck route sign that led to him driving in a residential area of Willow Springs, Illinois. He cut a vehicle right turn too short, drove into a yard, ran over some boulders that caused some truck damage. His truck was damaged, it became stuck and it had to be towed. He was issued a citation for driving in a no truck route area, pled guilty and paid a fine.

At first the employer sent him for driver improvement training but a week later terminated his employment. The employer safety department concluded that two preventable accidents within a short period justified termination.

## 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 administrative law judge concludes employer established claimant was discharged for misconduct effective November 13, 2012 for preventable accidents.

While the two accidents incurred by claimant are minor as to damage, the latest accident is the result of claimant disregarding a no truck route sign. He was issued a citation, pled guilty and paid a fine. He should not have been driving in a residential area that led to the accident that demonstrates a deliberate disregard of a standard of behavior the employer has a right to expect.

It is understandable the employer safety department terminated claimant not so much on the seriousness of these preventable accidents but the short time period in which they occurred during a brief period of employment.

The fact claimant did not immediately file an unemployment claim creates an inference he did not believe the employment termination was unjustified. Job disqualifying misconduct is established.

**DECISION:**

The department decision dated August 21, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on November 27, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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