

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A RUDNICK
Claimant

APPEAL NO. 09A-UI-06894-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 04/05/09
Claimant: Appellant (2)

Section 96.5-2-a -- Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 24, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 1, 2009. Claimant participated. Employer participated by Sandy Matt, Human Resources Specialist. The record consists of the testimony of Sandy Matt and the testimony of Robert Rudnick.

ISSUE:

Whether the claimant was discharged for misconduct:

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on January 10, 2007, as a full time over-the-road truck driver. On January 28, 2009, the claimant was placed on a watch list by the employer's safety department. The reason he was placed on this watch list was that he had received a speeding citation on April 4, 2008, in California, and a warning for traveling in a restricted lane in Maryland. After the claimant was placed on the watch list, he was required to take a re-training class on February 13, 2009. The claimant was warned that any further violations could lead to termination.

On February 18, 2009, the claimant was ordered by his dispatcher to give his tire chains to another truck driver who was taking a load into an area where tire chains were necessary. The claimant refused to comply with this directive because he believed that he was entitled to keep the chains since he drove in the northwestern United States where chains are required. On February 23, 2009, a driver called the employer's toll-free number to report the claimant had cut the driver off two different times. Another call was placed to the toll-free number on March 3, 2009, complaining about reckless driving on the part of the claimant.

The claimant's last day of work was March 8, 2009, and he was terminated on March 9, 2009. The reason for the termination was a combination of all of these incidents and the employer's belief that it was not in its best interests to keep the claimant on as a truck driver.

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.

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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

Misconduct that may warrant dismissal from employment does not necessarily constitute misconduct that will disqualify a claimant from receiving unemployment insurance benefits. After carefully considering all of the evidence in this case it is concluded that the employer has failed to sustain its burden of proof concerning misconduct.

The last two incidents prior to the claimant's discharge were reports to the employer's toll-free number. This number is posted on the back of the claimant's truck and other drivers are told to call this number to report a driver's conduct. Very little investigation is done to substantiate these complaints other than to determine which of the employer's trucks were in the area. The employer does not even talk to the driver and callers do not have to leave their names when calling the toll-free number. This is not the sort of evidence on which to base a disqualification for unemployment benefits.

The claimant did admit that he refused to give up his truck chains when asked by his dispatcher. The claimant believed in good faith that he was entitled to keep the chains because he was a driver based in the northwest. Insubordination can be the basis for finding misconduct, but in this case there seems to have been a dispute between the employer and the claimant over entitlement to the chains. This dispute does not rise to a willful or wanton disregard of the employer's interests. The claimant was on a safety watch list, but he had attended the re-training class mandated by his employer and there is no evidence of further driving violations or destruction of property or personal injury. Misconduct has not been established.

DECISION:

The decision of the representative dated April 24, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css