

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD WEATHERSPOON**  
Claimant

**APPEAL NO. 10A-UI-06779-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 04/04/10**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 28, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 28, 2010. Claimant participated. Employer participated through Sandy Matt.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an over-the-road driver and was separated from employment on January 28, 2010. Fleet manager Lucas Kasper fired him. He had been on the road for over 31 days and was over legal driving hours when he called Kasper who gave him another load to Cedar Rapids after he told him he had driver fatigue and did not want to quit or get fired. Kasper told him to take the load or lose his job. When claimant said he could not take that load, Kasper instructed him to take the load to the drop yard in Calumet City, Michigan, which he did. Kasper did not participate.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Since claimant was legally unable to drive when Kasper instructed him to do so or face being fired, the separation was a discharge and the burden of proof falls to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

Claimant's fatigue and legal inability to drive the load to the assigned destination was not misconduct. Benefits are allowed.

**DECISION:**

The April 28, 2010 (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits withheld shall be paid to claimant.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs