

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORBERTO MORALES
Claimant

APPEAL NO. 08A-UI-09778-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

OC: 08/17/08 R: 12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Norberto Morales filed an appeal from a representative's decision dated October 16, 2008, reference 01, which denied benefits based upon his separation from CRST, Inc. After due notice was issued, a hearing was held by telephone on November 6, 2008. Mr. Morales participated personally. Participating on his behalf was Mr. Carlos Castaneda, Attorney at Law. The employer participated by Ms. Sandy Matt, Human Resources Specialist. Employer Exhibit One and Claimant Exhibit A were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from April 11, 2007 until July 29, 2008 as an over-the-road tractor/trailer driver. Mr. Morales was employed on a full-time basis and was paid by the mile.

The claimant was discharged when he could not successfully pass a safety road test that was given to him on July 29, 2008. Based upon the claimant's inability to operate the tractor/trailer at the level of competence expected by the employer, a decision was made to terminate Mr. Morales from his employment. Prior to his discharge, the claimant had received no warnings or counseling and had not been involved in any chargeable driving accidents.

The safety test was issued to the claimant based upon complaints that had been made by the claimant's co-driver. To ensure the competence of both individuals, both drivers were tested. Mr. Morales passed a number of the criteria on the road test, however, a number of criteria needed were determined to be less than fully acceptable and categorized as "needing work." The claimant failed one portion of 15 of 17 possible categories.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Morales was discharged for intentional misconduct in connection with the work. It does not.

The evidence in the record establishes that prior to being road tested, Mr. Morales had received no warnings or counseling from the employer and had not been involved in any chargeable accidents. The road test was generated by a complaint from the claimant's co-driver and both drivers were tested. Based upon the criteria established by the company, it was determined that Mr. Morales did not possess the necessary skills, abilities and safety traits desired by the company and a decision was made to terminate the claimant from employment.

The question before the administrative law judge in this case is not whether the employer has the right to discharge a driver for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security law. While a decision to terminate Mr. Morales may have been a sound decision from a management viewpoint, the administrative law judge concludes that the evidence does not establish intentional disqualifying misconduct on the part of the claimant at the time of his separation.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

DECISION:

The representative's decision dated October 16, 2008, reference 01, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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