

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN J BALDERAMA
Claimant

APPEAL NO. 13A-UI-13093-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 10/20/13
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, CRST Van Expedited, Inc. (CRST), filed an appeal from a decision dated November 18, 2013, reference 01. The decision allowed benefits to the claimant, Benjamin Balderama. After due notice was issued a hearing was held by telephone conference call on December 16, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Specialist Sandy Matt.

ISSUE:

The issue is whether was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Benjamin Balderama was employed by CRST from November 7, 2012 until October 2, 2013 as a full-time over-the-road truck driver. The employer has a zero tolerance for alcohol and drug use. The only time a driver may purchase, possess or consume alcohol is while on home time or vacation. The claimant received a copy of the policy.

The employer was notified by the California Department of Motor Vehicles (CDMV) the claimant's commercial driver's license (CDL) had been suspended for "excessive blood alcohol level. He was immediately discharged under the company policy. The claimant acknowledged he was charged with driving under the influence of alcohol (DUI) and the criminal charge has not yet gone to trial. But both the claimant and the employer acknowledged the arrest occurred on his own time while he was operating his personal vehicle.

The claimant asserted the CDMV has instated his CDL but did not provide any evidence of this.

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 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer policy allows for the purchase, consumption and possession of alcohol only on personal time and it appears this is what happened in the present case. As there is no adjudication of the criminal charges it is not yet known if the claimant will permanently lose his CDL. Under these circumstances disqualification may not be imposed.

DECISION:

The unemployment insurance decision dated November 18, 2013, reference 01, is affirmed. Benjamin Balderama is qualified for benefits provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs