

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN H NELSON**  
Claimant

**APPEAL NO. 11A-UI-06592-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST FLATBED REGIONAL INC**  
Employer

**OC: 04/10/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated May 9, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on June 14, 2011. Claimant participated personally. The employer indicated they would not be participating.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: John Nelson was employed by CRST Flatbed Regional, Inc. from June 2010 until April 7, 2011 when he was discharged from employment. Mr. Nelson worked as an over-the-road tractor/trailer driver and was paid by the mile.

The claimant was discharged on April 7, 2011. At the time of discharge the employer cited traffic infractions and an incident where the claimant had knocked over a traffic sign. These incidents had taken place in January 2011 and had been timely reported to the employer. The employer took no action at that time to discharge the claimant. Although the employer was aware of the circumstances of the traffic ticket the claimant received in the State of Colorado and the sign incident in which he had knocked over a stop sign inadvertently.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence establishes the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer fails to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in this case establishes that Mr. Nelson was discharged on April 7, 2011 for infractions that took place approximately three months previously. The evidence establishes the employer was aware of the previous infractions but took no action to discipline or discharge the claimant at that time.

The administrative law judge concludes based upon the evidence in the record that the claimant was not discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated May 9, 2011, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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