

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHON CORDERO

Claimant

APPEAL NO. 09A-UI-17037-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

**Original Claim: 10/04/09
Claimant: Respondent (5)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving
Section 96.6-2 - Prior Adjudication
871 IAC 24.38(1)(c) – Prior Adjudication

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (employer) appealed a representative's November 5, 2009 decision (reference 01) that concluded Jonathon Cordero (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2009. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there a prior determination on the merits of this appeal that is binding on the parties and the outcome of this appeal?

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant had a prior claim for unemployment insurance benefits in his home state of Florida effective April 15, 2007. He started working for the employer on October 8, 2008. He worked full-time as an over-the-road truck driver for the employer. His last day of work was September 16, 2009. Upon his separation from employment with the employer, he sought to establish a new claim for benefits in Florida effective September 20, 2009. A determination was made in Florida on October 14, 2009 that the separation was a voluntary quit for good cause attributable to the employer. A further determination was made on October 22 that the claimant's base period wages were in Iowa, not Florida. As a result, the claimant established a claim for benefits in Iowa effective October 4. Agency records do not show that any wage credits were transferred from Florida to Iowa.

The claimant normally was on the road for 20 days and then home for 10. He had previously had to cancel an appointment for an eye examination due to a change in his schedule, and so had been waiting for a new opportunity to reschedule that appointment. The claimant had started a home time

on September 4, so he understood he would be off until after September 14. He made a new eye appointment, but was not able to get one until late on September 14, which he believed was still within his scheduled home time.

On September 11 the claimant's manager contacted him and sought to have him go back on the road immediately so that he could go and pick up a new student driver. The claimant explained that he had the rescheduled eye appointment set for the afternoon of September 14. The manager told the claimant he was no longer on the ten-day home plan and that if he refused to go back on the road immediately, he would be charged with abandonment. The claimant maintained that he could not miss another appointment, as there was a concern about him having glaucoma. When the claimant asked his manager what he wanted him to do with the truck if he was not willing to go back out on the road immediately, the manager responded that he should turn the truck back into a terminal in Pennsylvania. As a result, the claimant kept his eye appointment on September 14, and then drove the truck to the Pennsylvania terminal, leaving it there on September 16.

REASONING AND CONCLUSIONS OF LAW:

Prior determinations regarding separations, particularly determinations regarding the facts of a separation, can be binding on the same parties in a collateral proceeding. Iowa Code § 96.6-2(4); City of Des Moines Police Department v. Iowa Civil Rights Commission, 343 N.W.2d 836 (Iowa 1984). However, there can be instances where because of differences in procedures, jurisdiction, and the burden of proof, the prior adjudication might not be binding. Heidemann v. Sweitzer, 375 N.W.2d 665 (Iowa 1985). As to unemployment insurance determination in other states, there is a specific Iowa rule indicating that in the case a claim based on wages from multiple states, the paying state has the primary jurisdiction for determining eligibility. However, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. 871 IAC 24.38(1)(c). In this case, Iowa became the paying state and has primary jurisdiction over adjudication of the separation; no wages have been in fact transferred from Florida. As a result, the administrative law judge will proceed to make an adjudication on the separation.

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit, supposedly for other employment. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied

unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was his declining to shorten his home time and miss the eye appointment in order to go back on the road immediately. Under the circumstances of this case, the claimant's actions were not misconduct. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's November 5, 2009 decision (reference 01) is modified with no effect on the parties. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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