

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE M MCKEIGUE
Claimant

APPEAL NO. 06A-UI-10565-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

**OC: 10/01/06 R: 12
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed a representative's October 25, 2006 decision (reference 01) that concluded Lawrence M. McKeigue (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 14, 2006. The claimant participated in the hearing. Sandy Matt, a human resource specialist, 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.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 6, 2004. The claimant worked as a full-time over-the-road driver. The claimant drove with another person.

During his employment, the claimant had an accident when he was backing up his semi in early January 2006. The claimant went to defensive driving retraining classes on March 2 and July 20, 2006. The claimant had no understanding the employer required him to attend these classes because he hit another vehicle in late February or early March and had another backing up accident on July 18, 2006. The claimant understood the classes cost \$150.00 and the employer did not require him to pay for either defensive driving class.

Prior to September 28, 2006, the claimant had no idea his job was in jeopardy. The employer did not give him any written warnings that his job was in jeopardy or warn him that he needed to drive more carefully.

On or about September 27, the claimant had not received correct directions and found himself in a residential area after exiting the Interstate. The claimant knew he could not safely drive in

this area because of the trees, the low-hanging electrical wires and narrow streets. After assessing the situation the claimant concluded he had to get back to the Interstate and off the side street he was on. The claimant woke up his co-worker so he could stop oncoming traffic while the claimant made a three-point turn so he could get the semi back on the Interstate. On September 27, the employer received a motorist's complaint that the claimant made a U-turn on a highway.

On September 28, the claimant did not realize he had bumped and scraped the side of another truck as he left a truck stop. The other trucker felt the bump and reported the incident. The employer called the claimant back to the scene of the accident so he could exchange insurance information with the other trucker. The claimant did not consider this a major incident because this occurs frequently, the damage to the other truck was minor and the claimant had not even realized he had bumped or scraped the other truck.

The employer reviewed the claimant's driving record after the motorist's complaint and the September 28 accident. The employer informed the claimant he was discharged for making a U-turn on a highway. The claimant knew the employer did not allow drivers to make U-turns on highways and tried to explain the situation, but the employer would not listen. The employer discharged the claimant as of September 28, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct. Even though the claimant had previous accidents, he had no idea his job was in jeopardy based on his driving record. The claimant knew the employer did not allow drivers to make a U-turn on highways. On September 27, the claimant did not make a U-turn. The claimant knew he was in an area that was not safe for him to drive a semi. The claimant assessed his options and made the decision to make a three-point turn on the narrow side street so he could get back on the Interstate and safely drive the semi. Since no one with personal knowledge, other than the claimant testified, the claimant's testimony is credible. This means while there may have been other options, the claimant chose the option that was the safest for the immediate surroundings.

Even though on September 28 the claimant scraped another truck as he left an area, the claimant did not realize this had occurred. As soon as the claimant learned about this and was told to go back, he did so. The claimant did not intentionally damage another truck. Even though the claimant had other accidents on his driving record, the evidence does not establish that the claimant was so careless or was so negligent to the extent that he committed work-connected misconduct. Since the claimant did not commit a current act of work-connected misconduct, he is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 25, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw