

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A MORENO
Claimant

APPEAL NO. 07A-UI-08404-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

**OC: 07/29/07 R: 12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Moreno filed an appeal from a representative's decision dated August 22, 2007, reference 01, which denied benefits based upon his separation from CRST Inc. After due notice was issued, a hearing was scheduled for and held by telephone on September 18, 2007. Mr. Moreno participated personally. Participating as witnesses were Brandy Kaahaaina and Thomas Cook. The employer participated by Ms. Sandy Matt. Exhibits One, Two and Three were received into evidence.

ISSUE:

At issue in this matter is whether Mr. Moreno was discharged for 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 May 18, 2005 until July 16, 2007 when he was discharged for failing to maintain required licensing. Mr. Moreno worked as a full-time over-the-road tractor trailer driver and was paid by the mile. His immediate supervisor was Jake Folger, Dispatcher.

Mr. Moreno was discharged from his employment with CRST after he failed to maintain the required commercial driver's licensing required to perform the duties of an over-the-road tractor trailer driver. Mr. Moreno was aware that possessing a valid commercial driving license was a prerequisite and ongoing condition of employment and that failure to maintain his required licensing would result in his discharge from employment.

It is the claimant's position that his discharge should not be disqualifying as he was unable to return to the geographic area of court dates, at times, due to driving assignments.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged for reasons disqualifying under the provisions of the Iowa Employment Security Act. The evidence in the record establishes that Mr. Moreno was aware that possessing a valid commercial driver's license was a prerequisite and ongoing condition of employability in his position as over-the-road tractor trailer driver for CRST Inc. The claimant's driving license was suspended because the claimant failed to appear or to pay fines. Although the administrative law judge is aware that Mr. Moreno believes that his separation should be nondisqualifying as dispatch assignments at times prevented him from attending court dates, the administrative law judge does not agree. The claimant had the ability to request postponements or otherwise have representation appear on his behalf to handle citations that the claimant had received for minor traffic violations. The claimant's failure to maintain the required licensing showed a disregard for the employer's interests and the reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Act. The evidence establishes that Mr. Moreno had numerous infractions and after becoming unemployed the claimant began to sort out the various infractions and jurisdictions that may have caused his driving privilege to be suspended. Subsequently the claimant determined the basis for his license suspension. It appears that the claimant's commercial driver's license and privileges will be restored upon Mr. Moreno paying the fine and or court costs. The claimant is eligible for rehire with this company.

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 finds that the claimant's failure to maintain required licensing showed a disregard for the employer's interests and standards of behavior and thus was disqualifying. Benefits are withheld.

DECISION:

The representative's decision dated August 22, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the

claimant's weekly benefit amount, providing the claimant satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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