

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARLANDRON BENTON
Claimant

APPEAL NO. 06A-UI-09015-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

**OC: 07/23/06 R: 12
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed an unemployment insurance decision dated August 30, 2006, reference 03, which held that Garlandron Benton (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 3, 2006. The claimant participated in the hearing. The employer participated through Sandy Matt, Human Resources Specialist. Employer's Exhibit One was admitted into evidence. 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:

The issue is whether the employer discharged the claimant for disqualifying misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from October 4, 2005 through March 18, 2006, when he was discharged. Employees are not allowed to drink while on duty and they are on duty at all times unless they are at their homes. The employer's safety policies prohibit drivers from consuming any intoxicants while on duty or while subject to dispatch, including layovers. The policy further states that drivers must not consume intoxicants for 12 hours prior to returning to duty from time off. A dischargeable offense includes being found under the influence of intoxicants while on the job, including meal periods and while subject to call, away from domicile point. Another dischargeable offense is drinking within 12 hours prior to reporting for duty. On October 5, 2005, the claimant signed for receipt of the employer's policies and acknowledged that he understood those policies.

On March 18, 2006, the claimant and his co-driver were on layover at a truck stop in Commerce City, Colorado. They were not on a load but waiting to be dispatched. The claimant began drinking alcohol and his co-driver called the employer to report it. The dispatcher called the

claimant, who admitted he was drinking alcohol. They later received a load and the co-driver drove to Oklahoma City, Oklahoma, where the claimant was discharged on March 19, 2006.

The claimant filed a claim for unemployment insurance benefits effective July 23, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 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 claimant was discharged for violating the employer's safety policy that prohibits consuming intoxicants while on duty or subject to dispatch. He claims he was not on duty because he had maxed out on his allowable hours and could not legally drive. However, he was on layover and the employer's policy clearly states that employees are on duty and not allowed to drink while on layover. Furthermore, the claimant was part of a driving team and needed to be alert for his co-driver, regardless of whether or not

he was driving. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated August 30, 2006, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$476.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw