

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT H SPELL
Claimant

APPEAL NO. 13A-UI-08293-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST FLATBED REGIONAL INC
Employer

OC: 06/16/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 8, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on August 19, 2013, Claimant participated. Employer participated through Sandy Matt, Human Resources Specialist. Employer's Exhibit One was entered and received into the record. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road driver beginning on February 16, 2012 through June 17, 2013 when he was discharged. The claimant was discharged for violation of the company's alcohol and drug policy after he received a citation from the Texas Department of Transportation for having alcohol in his system while in control of commercial motor vehicle on June 6, 2013. The employer's policy explicitly forbids an employee from consuming alcohol while driving their truck. The claimant admitted he consumed six drinks ending at 7:30 p.m. and then began driving the truck at 8:45 p.m. The claimant knew or should have known that drinking six drinks prior to getting behind the wheel of the employer's truck was not allowed. The employer has a zero tolerance policy for alcohol violations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. IDJS*, 299 N.W.2d 698 (Iowa 1980). The claimant violated the employer's policy by drinking six alcoholic drinks prior to driving their truck. He is not allowed to have any alcohol in his system when driving a commercial vehicle. His actions are sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 8, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs