

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY E JACOBSON
Claimant

APPEAL NO. 13A-UI-03156-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 02/10/13
Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated March 7, 2013, reference 01. The decision allowed benefits to the claimant, Terry Jacobson. After due notice was issued, a hearing was held by telephone conference call on April 10, 2013. The claimant participated on his own behalf. The employer participated by Director of Internal Maintenance.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Terry Jacobson was employed by CRST from October 4, 1990 until February 8, 2013 as a full-time technician. His last day of work was January 15, 2013 when he took time off to deal with personal issues regarding his adult daughter and some legal problems. The week of January 21 through 25 the daughter was in the hospital and the week after that she was still in the hospital and the claimant had to testify in court regarding her legal problems.

The employer had determined to allow the claimant to use his accumulated vacation hours to cover missed work through January 29, 2013. The week of February 4 through 8, 2013, the claimant was in the hospital himself. He had asked his daughter to call in to work for him and she did not do so. The last week was considered unexcused because no one had notified the employer Mr. Jacobson would be absent or the reason for the absence. He was sent a certified letter on February 8, 2013, notifying him he was discharged but he did not get it by the time he went back to work on February 11, 2013, at which time Manager John Sauer told him he was fired.

Terry Jacobson filed a claim for unemployment benefits with an effective date of February 10, 2013. The records of Iowa Workforce Development indicate no benefits have been paid as of that date.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was gone from work for approximately 18 days. There is no proof one way or the other whether he called in each day through February 1, 2013. But the claimant did admit no one called to report his absences for February 4 through 8, 2013. Even if the absences were due to illness they were not properly reported which means they are unexcused. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The company policy calls for discharge for three days no-call/no-show, and he was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of March 7, 2013, reference 01, is reversed. Terry Jacobson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css