

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**VICTORIA L JOHNSON
c/o JESUS HOUSE
PO BOX 6036940
OKLAHOMA CITY OK 73146-0369**

**CRST INC
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 06A-UI-03208-CT
OC: 02/12/06 R: 12
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

CRST, Inc. filed an appeal from a representative's decision dated March 7, 2006, reference 02, which held that no disqualification would be imposed regarding Victoria Johnson's separation from employment. After due notice was issued, a hearing was held by telephone on April 10, 2006. The employer participated by Sandy Matt, Human Resources Specialist. Ms. Johnson responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Johnson's second period of employment with

CRST, Inc. was from November 18, 2004 until January 24, 2006. She was employed as an over-the-road driver. She had a valid CDL at the time of rehire but it lapsed at some point. On January 24, 2006, she was given 30 days in which to get her CDL renewed.

Ms. Johnson went through testing on several occasions in an attempt to renew her CDL. She was able to pass the written portion of the testing but was never able to pass the road test. The employer's last contact with Ms. Johnson was on February 22, 2006 when she reported that she had again failed the road test. Because she has been away from the job for more than 30 days, she is no longer eligible for reinstatement but is eligible for rehire.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Johnson was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Johnson was discharged because she no longer had the CDL that was required in order to operate the employer's vehicles. There was no evidence that she lost her license as a result of her driving. It appears that her license simply lapsed. Ms. Johnson made several attempts to obtain a valid CDL but was unable to do so. There was no evidence that she was not putting forth her best efforts to pass the required testing.

There was no evidence that Ms. Johnson deliberately or intentionally acted in a manner that caused her to become separated from employment. The administrative law judge appreciates that the employer could not allow her to drive without the required CDL. However, inasmuch as the failure to have the license was not the result of misconduct on Ms. Johnson's part, no disqualification is imposed. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 7, 2006, reference 02, is hereby affirmed. Ms. Johnson was discharged by CRST, Inc. but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kkf