

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL L ROCHELL**  
Claimant

**APPEAL NO. 13A-UI-02790-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 01/27/13**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 27, 2013 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on April 4, 2013. Claimant participated. Employer participated through Human Resources Specialist Sandy Matt and Fleet Manager Austin Godfrey. Employer's Exhibit 1 (fax pages 3 through 12) was received.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Is the claimant overpaid benefits?

**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 co-driver since September 2011 and was separated from employment on January 28, 2013. The last eight months he co-drove with Robert Robertson, whom claimant described as a "hot-head." On January 25 claimant finished his ten-hour driving shift and turned the tractor/trailer (truck), with its "high value load" of Nintendo product (Employer's Exhibit 1, fax p. 6), over to Robertson for his shift. About three hours into the shift, Robertson became tired and pulled into a truck stop parking lot. Claimant was unaware the lot required payment for parking and Robertson did not pay. He gathered his personal effects and laundry and went into the building to take a shower, do laundry, and eat. (Claimant recalled it was between 9:30 and 10:30 p.m.) Robertson stayed with the truck, notified dispatch he was not feeling well at 6:30 a.m. and climbed into the sleeper.

The employer's high value load security "mandatory" procedures require, among others, that teams have one driver remain with the vehicle at all times; if shut down for more than two hours "you" must notify dispatch via satellite of the location and reason for shutting down; and any truck sitting for more than two hours without notification will be assumed stolen and dispatch will have local authorities recover and secure the truck and trailer. (Employer's Exhibit 1, fax

p. 3, 4) The employer requires two check-in calls per day, one in the morning and one in the evening. (Employer's Exhibit 1, fax p. 5)

During the morning of January 25 after there was no further communication from the truck, dispatch began sending messages asking where it was at 9:00 a.m., 2:00 p.m., 4:00 p.m., and about 8:00 p.m. without response. Claimant recalled going outside (he estimated at about 1:00 a.m.) on January 26, and noticing the truck and Robertson were gone. He went back into the building to wait and did not call dispatch because he assumed Robertson was with the truck. Robertson called claimant (he recalled it as 5:30 a.m.) and said he was ready to go. Claimant went outside and the truck was gone. He asked Robertson where he had been and where the truck was and Robertson told him he "was out," it was "none of his business" and evaded other questions. Claimant did not contact dispatch about the missing truck or Robertson's absence until "days later."

On January 26 between 9:29 and 10:20 a.m. a high value load alert was entered requesting a tow and secure on truck number 3584, assigned to claimant and Robertson, indicating it had been out of communication or shut down for 24 hours. (Employer's Exhibit 1, fax p. 9) The truck was towed on January 26 at a cost of \$895.53. (The impound bill for \$415.00 was for July 6, 2012 and is not applicable to this situation.) (Employer's Exhibit 1, fax pp. 10 - 12) The load of Nintendo product was intact when the truck towed and secured.

Claimant received unemployment benefits after the separation on a claim with an effective date of January 27, 2013.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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.

Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The parties' timelines conflicted or overlapped by 12 to 24 hours. The employer provided limited, but credible, evidence containing time stamps in communications about the tow that verify that the truck was unattended between 9 a.m. on January 25 and 9:30 a.m. on January 26, 2013. (The driver's log, messages sent to the truck, and other date/time specific documentation would have helped clarify the record.) Although Robertson bears primary responsibility because he was left in charge of the truck while claimant went into the truck stop during his personal break time, claimant acknowledged not attempting to contact the employer or Robertson after knowing the truck was gone from its parking spot and not notifying the employer after Robertson appeared at the truck stop without the truck, by his estimate, up to eight hours later. The evidence establishes that claimant violated two mandatory high value load procedures in addition to failing to make two call-ins. While he had not been warned about similar issues in the past, his failure to abide by the mandatory rules or communicate with the employer until "days later" was the result of a deliberate disregard of the employer's interests in protecting the safety of its drivers (while Robertson was likely away from the truck for personal reasons, hijacking is a threat), the value of the equipment (tractor and trailer), and the security of the customer's product. This is disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, claimant has received benefits but was not eligible for those benefits.

**DECISION:**

The February 27, 2013 (reference 01) decision is reversed. 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.

**REMAND:** The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/tll