IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MALCOLM S LOCKAMY
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO. 09A-UI-03785-SWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 01/18/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 25, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 3, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Lisa Oetken participated in the hearing on behalf of the employer. Exhibits 1-3 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a truck driver for the employer from December 5, 2001, to January 9, 2009. The claimant was informed and understood that under the employer's work rules, sexual harassment, including verbal or physical conduct of a sexual nature, was grounds for discipline. The claimant was warned in July 2006 after a female trainee falsely reported that the claimant had told her that he had erotic dreams about her. The claimant did not make the comments reported. The claimant was warned in October 2007 after a female trainee falsely reported the claimant had tried to choke her. The claimant did not choke the trainee or have any physical contact with her. In October 2008, a driver reported to the claimant's female fleet manager that the claimant had claimed he had a special relationship with the manager. This was a rumor being spread that the claimant has in love with the manager. The rumor was untrue and the claimant never suggested that he had a special relationship with the manager.

The claimant was off work for Christmas and then went back to driving. In early January 2009, he and his male co-driver, Michael Miller, were talking on the phone. Miller was at home yet. Previously, Miller had suggested his fiancé might be pregnant, so they talked about that. On January 7, 2009, Miller reported that when he responded "No" to the claimant's question as to whether his fiancé was pregnant, the claimant said that she was pregnant and the baby would have a flat top and mustache (the claimant has a flat top haircut and a mustache). He also reported that the claimant had said that if he and his fiancé ever got bored, they could call the

claimant to come over. The claimant did not make the comments attributed to him. Miller had commented once that he would do anything to get his own truck.

When management received Miller's complaint, the employer terminated the claimant on January 9, 2009, for violating the employer's sexual harassment policies.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant's firsthand testimony outweighs the employer's evidence. Since the hearing was by telephone, the employer could have easily arranged for Miller to testify. The employer has failed to meet its burden of proof. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 25, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw