

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

DARWIN A HARPER
9376 OUTER DR
DETROIT MI 48213

CRST INC
SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-04323-BT
OC: 03/14/04 R: 12
Claimant: Respondent (2)

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
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed an unemployment insurance decision dated April 8, 2004, reference 01, which held that Darwin Harper (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2004. The claimant participated in the hearing. The employer participated through Scott Comer, Fleet Manager and Sandy Matt, Human Resources Specialist. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from December 20, 2001 through January 12, 2004. He was discharged for repeated inappropriate behavior. The final incident occurred on January 9, 2004 in St. Paul, Minnesota at the General Mills facility. Another driver and the customer complained that the claimant was dumping bodily fluids (urine) on the employer's parking lot. The claimant was cleaning out his truck. He admitted to the employer that he dumped some fluid but claimed it was water that his co-driver had used to clean himself. The claimant's co-driver had not driven with him for at least a week.

He had received a previous warning on April 18, 2003 for physically threatening a security guard in Fontana, California. The claimant and his co-driver were ready to leave the facility but needed to be checked out at the gate. The security guard was not there and the claimant eventually started leaving anyway. The guard arrived before they left and shined his flashlight in the truck's mirrors to get their attention. The guard then advised the claimant and his co-driver that they needed to check out and leave the bill of lading. The claimant became argumentative telling the guard not to leave the gate area and the guard argued back. Eventually the claimant got out of the truck and walked over to the guard and dared him to say another word. The guard felt threatened and thought he was going to be hit so he said nothing more. The claimant got back into the truck saying, "I thought so." The guard filed an incident report complaining about the claimant.

The first incident occurred on January 7, 2003 when the claimant and his co-driver became belligerent because their load was not ready around 5:00 p.m. at PVD. Both drivers were walking around the dock and when asked to leave the dock area, they replied, "Why do you care? It's not like we're stealing anything." Shortly before leaving, the claimant or his co-driver entered the bathroom and remained there for some time. After they left, the client entered the bathroom and found human feces all over the walls, floor and toilets. The client directed they never come on its premises again. The employer could not be sure whether it was the claimant or his co-driver so only a verbal warning was issued.

The claimant filed a claim for unemployment insurance benefits effective April 8, 2004 and has received benefits after the separation from employment in the amount of \$2,100.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged for repeated inappropriate behavior and conduct that was detrimental to the employer's business. He denies all wrongdoing but his testimony is not found credible. The claimant testified that according to the law, he had to document each and every time he went to the bathroom so that proved he was not the individual to smear feces on the wall on January 7, 2003. The employer subsequently clarified that if the claimant was "on duty-not driving", it would not be documented if he went to the bathroom and it would only be documented if he was driving and made a special stop to take a break and go to the bathroom. The claimant was "on duty-not driving" at the time of the January 7, 2003 incident. The preponderance of the evidence establishes he was responsible for the other two incidents. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated April 8, 2004, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,100.00.

sdb/kjf