

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS E BUSCH

Claimant

APPEAL NO. 09A-UI-06051-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 03/22/09

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (CRST) filed an appeal from a representative's decision dated April 9, 2009, reference 01, which held that no disqualification would be imposed regarding Douglas Busch's separation from employment. After due notice was issued, a hearing was held by telephone on May 14, 2009. Mr. Bush participated personally. The employer participated by Sandy Matt, Human Resources Specialist.

ISSUE:

At issue in this matter is whether Mr. Busch was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Busch's last period of employment with CRST was from October 28, 2005 until March 19, 2009. He was employed as an over-the-road driver. He was discharged because of his driving record.

Mr. Busch received a speeding ticket on January 18, 2007. He was exceeding the posted limit by ten miles per hour. On June 1, 2007, the employer provided him with retraining. In July of 2007, the employer received a complaint from a motorist that he had made an improper lane change. A similar complaint was received from a motorist in September of 2008. On February 11, 2009, Mr. Busch received a citation for following too closely and a warning for exceeding the posted speed limit by four miles per hour. The employer had him undergo a defensive driving class and retraining on February 27, 2009. He was warned that any further moving violations would result in his discharge.

On March 19, 2009, the employer received notice that Mr. Busch had run a red light on March 5, 2009. The violation was caught on an automatic traffic camera. Mr. Busch was aware of the violation at the time it occurred but had not brought it to the employer's attention. He had crested a hill and noted a traffic light at the bottom. He did not slow or stop his vehicle in

sufficient time to avoid going through the red light. As a result of this violation, he was discharged. He was notified of the discharge while he was under a dispatch. He was told he would no longer have a job when he returned with the vehicle. His driving record was the sole reason for the discharge.

Mr. Busch filed a claim for job insurance benefits effective March 22, 2009. He has received a total of \$2,166.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

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). Mr. Bush was discharged because of his driving record. He had been trained and retrained during the course of his employment. His last training was in February of 2009. He had been cited for moving violations and had caused complaints from other motorists before the final retraining.

Mr. Busch's final training came after he was cited for following too closely and given a warning for speeding on February 11, 2009. He knew as of the February 27 retraining that any further violations would result in his discharge. In spite of the warning, he ran a red light less than one week later. It appears that he failed to have his vehicle under control on March 5. Given his history of speeding, the administrative law judge believes he ran the red light because he was speeding and failed to decrease his speed in sufficient time to come to a complete stop at the red light.

The employer had the right to expect that its drivers would obey all rules of the road to protect the driver, the employer's vehicle, the customer's load, and the rest of the driving public. Mr. Busch's driving history reflects a pattern of disregarding the employer's interests and standards. Speeding and following other vehicles too closely could cause accidents for which the employer could potentially be held liable. The administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

Mr. Busch has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated April 9, 2009, reference 01, is hereby reversed. Mr. Busch was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job

insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Busch will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css