IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TAMARA S DEMERY
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO. 09A-UI-02116-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 12/28/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tamara S. Demery (claimant) appealed a representative's February 3, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from CRST Van Expedited, Inc (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2009. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 2, 2005. She worked full time as an over-the-road truck driver in the employer's transportation company. Her last day of work was November 21, 2008. The employer discharged her on that date. The reason asserted for the discharge was having too many tickets and failing to report one of those tickets.

The claimant had received a ticket for coasting in neutral on May 25, 2006; a ticket for improper backing on June 16, 2006; and a ticket for failing to observe a stop sign on November 30, 2006. Another ticket that the employer asserted the claimant had not reported was a ticket on October 18, 2007 for unsafe operation of a vehicle. In the fall of 2008 the employer sent the claimant a form for her to fill out for a performance appraisal; one of the questions inquired about tickets the claimant had received. The claimant did not have any information on dates with her when she was sent the form and told to return it, but she believed that the concern was with what "points" had been assessed against her license. She believed that none of the tickets had resulted in "points," so she put "none" on the form and returned it, explaining to her dispatcher how she was interpreting and answering the question.

While the claimant also did not report the tickets from 2006 when she wrote "none," the employer did not assert that she had also failed to report those tickets. It could not be established when or how it learned of the November 18, 2007 ticket, but on November 21, 2008 the employer's safety department determined to discharge the claimant. The claimant had never been given any formal warning regarding any issue with her driving record or told that her job might be in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the assertion she had too many tickets and had failed to report one. The employer has not established that there was a current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The most recent incident in question occurred over a year prior to the employer's discharge of the claimant, and the employer has not established that it did not discover and could not have discovered this until a short time prior to the claimant's discharge. As to the claimant's failure to include it on her report, while she may have been mistaken in interpreting what the question was asking, she had explained her interpretation to her dispatcher and was not told otherwise, so any misinterpretation and mis-reporting on that form was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 3, 2009 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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