

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC J GILBERT
Claimant

APPEAL NO. 09A-UI-11601-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 07/05/09
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. filed a timely appeal from a representative's decision dated August 4, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 27, 2009. The claimant participated personally. The employer participated by Ms. Sandy Matt.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Eric Gilbert was employed as an over-the-road tractor/trailer driver/student trainer for CRST Van Expedited, Inc. Mr. Gilbert began his employment on April 10, 2008. His last day of work was June 2, 2009. The claimant at that time was allowed some time off work in order obtain a valid Class A CDL license that was required for the performance of his duties as an over-the-road tractor/trailer driver. Mr. Gilbert had been informed in advance by his home state that he would be required to undergo retesting to obtain a valid CDL license. Although the claimant had approximately two months' advanced notice of this requirement, he had not done so.

In an effort to facilitate Mr. Gilbert's obtaining the licensing which was a condition of his employment with the company, the employer not only allowed Mr. Gilbert time off work but allowed him to take a company truck for seven days to facilitate testing. The claimant was expected to promptly obtain the licensing that was a condition of his employment and to return to work.

Mr. Gilbert did not complete the retesting for his CDL license and after a reasonable period of time the employer expected the truck to be returned. At the time of hearing Mr. Gilbert has not obtained a valid CDL license and has not maintained contact with the company. His

employment with the company came to an end after the six-week time period that he had been allotted by the company had elapsed and he had not completed the re-licensing as agreed.

It is the claimant's position that he did not obtain the licensing as he did not have the funds to do so and later did not have the use of the company truck to facilitate the testing process.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's separation from employment took place under disqualifying conditions.

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.

The evidence in the record establishes that Mr. Gilbert knew at the time of hire that the possession and maintenance of a valid Class A CDL license was a job requirement as an over-the-road tractor/trailer driver. Mr. Gilbert had two months' advance notice that his current CDL license was going to be invalidated and that he was going to be required to undergo retesting by his home state. In an effort to facilitate the claimant, the employer allowed Mr. Gilbert not only time off work but allowed him to take a company truck to the state of Georgia to facilitate his retesting. The claimant did not complete the retesting during the seven days that he was allowed the use of the company truck and did not obtain the job required licensing within six weeks as agreed. When the claimant failed to maintain contact with the

company and to fulfill the agreement between the parties, he was separated by the employer. The administrative law judge concludes that the claimant knew or should have known that his failure to maintain the required DOT licensing was a job requirement. His failure to do so and his failure to maintain contact with the employer as agreed showed a disregard for the employer's interests and standards of behavior which resulted in his discharge from employment. Benefits are withheld.

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.

DECISION:

The representative's decision dated August 4, 2009, reference 01, is reversed. Eric Gilbert is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount,

providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs