

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDDIE ROLON

Claimant

APPEAL NO. 09A-UI-16789-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 10/04/09

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated October 28, 2009, reference 01. The decision allowed benefits to the claimant, Eddie Rolon. After due notice was issued, a hearing was held by telephone conference call on February 2, 2010. The claimant participated on his own behalf and was represented by Iowa Legal Aid in the person of Rodney Kleitch.

The employer provided the names and telephone numbers of two separate witnesses. Randy Kopecky's number was called at 1:57 p.m. and the only response was a voice mail. Sandy Matt's number was dialed at 1:58 p.m. and the only response was a voice mail. Messages were left indicating the hearing would proceed without their participation unless they called the toll-free number prior to the close of the record. By the time the record was closed at 2:17 p.m., neither employer witness had contacted the Appeals Section and the employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

Eddie Rolon was employed by CRST from September 7, 2007 until September 10, 2009 as a full-time driver. He drove as part of a team and also trained students. On August 28, 2009, his co-driver "blew the engine" of the truck they were driving and he was fired as a result. On September 10, 2009, Mr. Rolon's dispatcher/manager, Scott Cummins, told him he would be fired unless he agreed to become an independent owner/operator. He elected to do this.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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 claimant did not quit but was forced to enter self-employment or be fired. Under the provisions of the above Administrative Code section, this is not a voluntary quit but a discharge. The employer has the burden of proof to establish the claimant was discharged for substantial,

job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). As the employer did not participate to provide any evidence of misconduct, disqualification may not be imposed.

DECISION:

The representative's decision of October 28, 2009, reference 01, is affirmed. Eddie Rolon is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw