

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD K SWAIN
Claimant

APPEAL NO. 11A-UI-14147-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**OC: 10/02/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the October 18, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 8, 2011. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through human resources specialist Sandy Matt. Employer's Exhibit One was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to a current act of job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road driver and was separated from employment on September 16, 2011. His last day of work was September 15. On August 4 he received a speeding ticket of 68 in a 55 mph zone. The employer received that information on August 10. The safety department reviewed the ticket and his driving history including failure to stop at a stop sign on April 4, 2011, improper backing causing an accident on March 10, 2011, and following too closely twice within one mile on February 16, 2011. (Employer's Exhibit 1) Matt had no record of when the decision was made to discharge and was not sure if claimant was aware of the investigation but the employer allowed him to keep working until the safety director told his supervisor to terminate him and waited for him to get to a place where they could securely end the employment and retrieve the truck. The employer routed him from Dallas to Miami on September 11, 2011, then from Miami to Tennessee, from Tennessee to Wisconsin, and from Wisconsin to York, Pennsylvania where he was notified of the discharge and given a bus ticket to his home in Florida on September 16.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The termination of employment must be based upon a current act. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

Inasmuch as employer had notice of the most recent misconduct in the form of a traffic citation on August 10 but continued to send him on the road most recently from September 11 through 16, routing him into and out of his home state of Florida before discharging him more than a month after the final incident, the employer has not established a current or final act of misconduct. Accordingly, benefits must be allowed.

DECISION:

The October 18, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs