

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEDRO A RIVERA
Claimant

APPEAL NO: 13A-UI-03079-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 01/06/13

Claimant: Respondent (4/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (employer) appealed a representative's March 4, 2013 decision (reference 01) that concluded Pedro A. Rivera (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2013. 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 there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 18, 2012. He worked full time as an over-the-road truck driver. Throughout his active employment, he had informed the employer that he would only be available to work for the employer during the fall semester, as he would be resigning to return to school. His last day would have been January 13, 2013, with his classes scheduled to begin on January 15.

On December 16, 2012 the claimant and his co-driver delivered their last delivery in Connecticut; they were directed to get to a "safe haven" and await further dispatch instructions. The claimant finished driving at about 11:43 p.m., arriving at a truck stop about 40 hours from his own home. At that point he was out of his allowable hours of service for the week, and was scheduled for his 34-hour restart rest break; he would not be eligible to drive again until about 12:00 p.m. on December 18. His co-driver, however, had nearly full hours of service driving eligibility remaining. The claimant arranged to get to his home for his rest break, while the co-driver was directed to drive to another area to pick up another driver and make another delivery.

On December 17 the claimant sent his dispatcher/fleet manager an email indicating that he was still ready and able to drive from noon on December 18 through January 13. For some unknown reason, the employer determined not to put the claimant on another truck during that period, so the claimant did not work after December 16. The employer did not remove the claimant from its system as a driver until January 9, 2013.

The claimant established an unemployment insurance benefit year effective January 6, 2013.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would be disqualified unless it was for good cause attributable to the employer. If the employer discharged the claimant, he would be disqualified only if it was for work-connected misconduct. §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did express his intent not to continue working with the employer as of January 13, 2013. The claimant would be disqualified for unemployment insurance benefits as of that date unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting available full-time work in order to return to school is a personal choice and not a reason attributable to the employer. 871 IAC 24.25(26). The claimant has not satisfied that burden. Benefits are denied effective the benefit week beginning January 13, 2013.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, the employer laid off or discharged the claimant, and if it was a discharge, if it was for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but 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 decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 which 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 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. 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 evidence does not indicate that the employer discharged the claimant for misconduct. Rather, the employer effectively laid off or discharged the claimant for non-disqualifying reasons prior to the effective date of the quit. Therefore, the claimant is not disqualified from benefits for the period between December 16 and the date he was intending to quit. He is eligible to receive unemployment insurance benefits through the benefit week ending January 12, 2013.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits for weeks beginning January 13, 2013 but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's March 4, 2013 decision (reference 01) is modified in favor of the employer. The claimant voluntarily quit without good cause attributable to the employer effective January 13, 2013. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits until January 12, 2013, if he was otherwise eligible. The employer is chargeable for any benefits paid for that period. As of January 13, 2013, benefits are withheld

until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer is not chargeable for any benefits after January 13, 2013. The matter is **REMANDED** to the Claims Section for investigation and determination of the overpayment issue for benefits beginning January 13, 2013.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs