

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRENT D FORD**  
Claimant

**APPEAL NO: 08A-UI-10734-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 10/12/08 R: 12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

CRST Van Expedited, Inc. (employer) appealed a representative's November 7, 2008 decision (reference 01) that concluded Trent D. Ford (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 December 1, 2008. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf and presented testimony from one other witness, Jim Chapman. 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 August 9, 2006. He worked full time as an over-the-road truck driver and trainer. His last day of work was September 17, 2008. The employer discharged him on that date. The reason asserted for the discharge was having had multiple cigarette lighters in the shape of guns in his tractor.

On about September 16 a former student who had driven with the claimant complained to the employer that several weeks earlier the claimant had a confrontation with a driver of a private vehicle in a parking lot in which the claimant brandished what the student claimed to be a real gun. When confronted, the claimant denied that he had a real gun in the truck, but admitted that he had several cigarette lighters in the shape of guns in the truck, although he also denied brandishing any of those at anyone. The employer's policies prohibit the possession of guns in the employer's property or equipment, but do not directly address facsimile items. While the employer tended to believe that the claimant had probably had a real gun in the truck or that he had at least brandished one of the cigarette lighter "guns" at the other driver, it had no proof of that other than the complaint by the student driver. When the claimant admitted that he had the cigarette lighter gun facsimiles, the employer determined that was a sufficient violation of its

policy against no guns, or was at least a bad choice in judgment on the part of the claimant, and discharged him.

### **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 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 reason cited by the employer for discharging the claimant is his possession of the facsimile cigarette lighter "guns" in the truck. Misconduct connotes volition. Huntoon, supra. There is no evidence the claimant knew that mere possession of facsimile "guns" could also result in discharge. To the extent the possession of the facsimile "guns" was poor judgment, under the circumstances of this case, the claimant's actions were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and were the result of 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 November 7, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he 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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