

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK CUMMINGS

Claimant

CRST VAN EXPEDITED INC

Employer

APPEAL NO: 13A-UI-09929-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/14/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 23, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 23, 2013. The claimant participated in the hearing. Sandy Matt, Human Resources Specialist and Ben Williams, Fleet Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for CRST Van Expedited from January 31, 2013 to June 17, 2013. The claimant was assigned a high value load going to western Pennsylvania June 15, 2013. Drivers are trained in carrying high value loads and the employer makes it very clear what is and is not allowed when carrying a high value load (Employer's Exhibit Two). One part of this policy requires that a high value load never be left alone at any time for any reason. High value loads always run with two drivers and one driver must remain with the tractor and trailer at all times. If the load is going to shut down for more than two hours, the drivers are required to notify dispatch via the Qual-Com satellite system, noting the location of the truck and the reason for the shut-down. If the drivers fail to follow that policy, dispatch will assume the truck has been stolen and call the local authorities to recover and secure the truck and trailer (Employer's Exhibit Two).

On June 15, 2013, the claimant and his co-driver made a scheduled stop in Carlisle, Pennsylvania, and both men left the truck. The employer made several attempts to contact them both through the Qual-Com system and their cell phones without receiving a response and eventually had the tractor and trailer towed. The claimant planned to meet friends that weekend at a truck stop and his co-driver went with him. The claimant knew the truck could not be left alone but because he had plans with his friends he decided to proceed with his plans rather

than stay with the truck when his co-driver refused to stay, thus leaving the truck unattended. After many attempts to contact the claimant and his co-driver, the employer was able to speak to the claimant's co-driver by cell phone June 17, 2013. After reviewing the incident, the employer terminated the claimant's employment for leaving a high value load unattended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

"Theft of freight is extremely high in the truck industry" (Employer's Exhibit Two). The claimant was trained in the employer's high value load practices and procedures and had delivered high value loads for the employer in the past. He admits he was fully aware of the policy of not leaving the truck alone but did so anyway because he had plans and his co-driver tagged along without his permission. When the claimant learned his co-driver was not going to stay with the truck he had a duty to at least notify the employer of the situation or stay with the truck. Instead, the claimant walked away from the truck and did not return or make contact with the employer until after the tractor and trailer had been towed, which was two days after they abandoned the truck.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The August 23, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css