

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTOR LUNA**  
Claimant

**APPEAL NO: 11A-UI-13060-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 08-28-11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 23, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 27, 2011. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing or request a postponement of the hearing as required by the hearing notice.

**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 April 20, 2010 to August 21, 2011. The claimant's daughter had a rare form of mouth cancer and had to undergo surgery. She also has two small children who needed care. The claimant asked his freight manager if he could have a few weeks off to care for his daughter and was told that would be no problem but he was not offered Family and Medical Leave (FML). Consequently, the claimant took the time off and moved to Fairfield, California, to be with his daughter. He maintained contact with the employer throughout his absence and also sought work, such as retail and construction, that would not take him on the road overnight while he was in Fairfield caring for his family but was unsuccessful in that work search. The claimant was ready to return to work October 20, 2011, but his employment had been terminated and he was required to go through the new hire process to have his previous job back. The claimant never quit his employment and was able and available for work during the time he was off work from this employer to help his daughter.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant took five weeks off work to help take care of his daughter and her children while she was ill. The employer failed to offer the claimant FML or any other form of leave of absence, which it appears he would be eligible for. The claimant maintained contact with the employer while he was gone and sought other employment while he was in Fairfield. The claimant had to be rehired to return to work, which indicates he was terminated and was eligible for rehire. The claimant did not quit his employment and there is no evidence of misconduct on the part of the claimant. Under these circumstances, the administrative law judge must conclude the claimant's separation from employment was for good cause attributable to the employer. Therefore, benefits are allowed.

**DECISION:**

The September 23, 2011, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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