

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH M KENT
Claimant

APPEAL NO. 12A-UI-04913-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 03/25/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 19, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 21, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Sandy Matt participated in the hearing on behalf of the employer with a witness, Alvin Hoggard.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road truck driver from December 9, 2010, to February 14, 2012. The claimant was informed and understood that under the employer's work rules the employer had zero tolerance for alcohol and drug use. The rules prohibit transporting alcohol on the truck, consuming alcohol while having access to the truck, and consuming alcohol while being available for dispatch.

The claimant willfully violated the policy by purchasing whiskey at a truck stop while out on the road. He put the whisky in a water bottle and transported it in the truck. He drank the alcohol in the truck to help him sleep.

The employer received a tip that the claimant had alcohol in his truck. The terminal manager inspected the truck on February 14, 2012. The claimant admitted to buying alcohol and transporting it in the truck. He admitted to consuming alcohol in the truck to help him sleep.

On February 14, 2012, the employer discharged the claimant for violation of the alcohol conduct rules.

The claimant filed for and received a total of \$2,604.00 in unemployment insurance benefits for the weeks between March 25 and May 12, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated April 19, 2012, reference 01, is reversed. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs