

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDDIE FARLAY
Claimant

APPEAL NO. 08A-UI-04375-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

OC: 04/06/08 R: 12
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

CRST Inc. filed a timely appeal from the April 28, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 21, 2008. Claimant Freddie Farlay participated. Sandy Matt, Human Resources Specialist, represented the employer and presented additional testimony through Lance Riley, Fleet Manager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Freddie Farlay was employed by CRST Inc. as a full-time over-the-road truck driver from April 18, 2007 until February 8, when Fleet Manager Lance Riley discharged him. Mr. Riley had become Mr. Farlay's supervisor in late 2007.

The circumstances surrounding Mr. Farlay's discharge from the employment concerned Mr. Farlay's lack of a co-driver to assist him in operating the employer's semi truck. The employer required that two drivers work as a team to operate the semi tractor assigned to Mr. Farlay. On January 25, Mr. Farlay arrived back in his home state of Georgia for the purpose of meeting up with a new co-driver. Mr. Farlay's previous co-driver had just quit and Mr. Farlay had dropped that person off in Pennsylvania on January 21. Mr. Farlay arrived at the employer's terminal in Atlanta on Friday, January 25. The employer assigned Mr. Farlay the task of contacting and securing a new co-driver. The employer provided Mr. Farlay with contact information for a list of potential co-drivers. Mr. Farlay spent Friday, January 25 and Saturday, January 26 contacting prospective co-drivers. When Mr. Farlay had no luck locating a co-driver, he asked Mr. Riley for assistance, but Mr. Riley told Mr. Farlay he would have to locate his own co-driver. Mr. Farlay wanted to work and needed money. Mr. Farlay arrived at his home in Columbus on January 27.

Mr. Farlay eventually located a driver who agreed to become Mr. Farlay's co-driver. The new co-driver could not go on the road until February 4, so Mr. Farlay waited for the co-driver to be available. On February 4, Mr. Farlay contacted the new co-driver, who said he had changed his mind and would not be going to work for CRST. Mr. Farlay contacted Mr. Riley to discuss the difficulty he was having in locating a new co-driver. Mr. Riley told Mr. Farlay that the truck could not move without two drivers. Mr. Farlay also requested and received an advance. Mr. Farlay needed money, in part, to assist his daughter and grandchildren with lodging. The daughter was experiencing difficulties with a boyfriend.

On February 8, Mr. Riley left a message telling Mr. Farlay that he was sending a tow truck to collect the employer's semi. Mr. Farlay did not realize the employer had towed the truck until after the tow had occurred. Mr. Farlay contacted Mr. Riley, who indicated that the employer was going to part ways with Mr. Farlay.

REASONING AND CONCLUSIONS OF LAW:

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has failed to present sufficient evidence to establish misconduct on the part of Mr. Farlay. Mr. Riley was unable to recall details relating to freight loads that Mr. Farlay allegedly missed. Mr. Riley was unable to recall other events until Mr. Farlay triggered his memory during cross-examination. The greater weight of the evidence indicates that Mr. Farlay was unable to go back on the road in a timely fashion because the employer had delegated to him the difficult task of securing a co-driver. The evidence indicates that Mr. Farlay made a good faith effort to secure a co-driver. The evidence indicates that Mr. Farlay's family issues played out during the time that Mr. Farlay was without of co-driver. The evidence indicates that it was the lack of a co-driver, not Mr. Farlay's family issues, that prevented him from returning to road in a timely fashion.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Farlay was discharged for no disqualifying reason. Accordingly, Mr. Farlay is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Farlay.

DECISION:

The Agency representative's April 28, 2008, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css