

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILIP E REESE
Claimant

APPEAL NO: 09A-UI-11571-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 07/05/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

CRST Van Expedited Inc. filed a timely appeal from a representative's decision dated August 7, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 27, 2009. The claimant participated personally. The employer participated by Sandy Matt, Human Resource Specialist and Marcus Schneider, Fleet Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Philip Reese was employed as an over-the-road tractor trailer driver for CRST Van Expedited from November 29, 2006 until July 3, 2009 when he was discharged from employment.

The claimant was discharged after it was determined that the company truck that was assigned to Mr. Reese had an "inverter" that had been hooked up by an outside source that was felt to be a fire hazard. Mr. Reese was discharged because he was the senior driver that had been assigned to the truck. Although Mr. Reese had been assigned to the truck for approximately one year he had not observed wiring or the inverter hookup that appeared to be improper or a danger.

At an unspecified time preceding Mr. Reese's discharge, a Qualcomm message had been sent to drivers on more than one occasion to check for electronic devices that had been hooked up that presented a hazard. Company policy required that electronic devices be installed by the company's maintenance department or approval be given for the device.

The truck that Mr. Reese was assigned to had been previously assigned to different drivers. At the time Mr. Reese took possession of the company truck the inverter, a device that changes electricity so they can be used to run iceboxes and microwaves, had already been installed and

the claimant reasonably concluded that the employer was aware of it and/or that it had been authorized.

Mr. Reese did not receive the Qualcomm message regarding inspecting company trucks for electronic devices or the manner in which they were hooked up as the message was received while a co-driver was operating the truck and Mr. Reese was apparently off duty in the sleeper. Based upon the claimant's understanding of the message, as relayed to him, Mr. Reese believed that he was not in violation of any company directive. The employer elected not to discharge the co-driver who also was assigned to the truck.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing misconduct sufficient to warrant a denial of unemployment insurance benefits.

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 evidence in the record establishes that Mr. Reese did not intentionally violate the company rule or directive. The inverter in question and its wiring were in place when Mr. Reese was assigned to the truck by CRST Van Expedited and the claimant reasonably concluded that the employer was aware of the electronic device when it had assigned the truck to him. The administrative law judge finds the claimant's testimony to be credible that he did not directly

receive the Qualcomm message to check the truck for devices or the manner in which they were hooked up. The claimant testified that the message was relayed on a computer screen in a truck during times that he was not on duty and was not personally aware of the message. Based upon the manner it was relayed to him, Mr. Reese was not aware of the employer's expectations.

While the decision to terminate Mr. Reese may have been a sound decision from a management viewpoint, intentional disqualifying misconduct has not been established. Benefits are allowed.

DECISION:

The representative's decision dated August 7, 2009, 2009, reference 01, is affirmed. Claimant was dismissed under no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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