

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK MARINE

Claimant

APPEAL NO. 11A-UI-13263-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 09-04-11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 29, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 2, 2011. The claimant participated in the hearing. Sandy Matt, human resources specialist, participated in the hearing on behalf of the employer.

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 February 18, 2011 to July 5, 2011. On the evening of June 8, 2011, the claimant and his co-driver were waiting to unload in Appleton, Wisconsin, the following morning when the claimant received a message that his mother was in the emergency room in Arizona, where she had been diagnosed with Alzheimer's Disease and been found wandering around. The claimant sent a Qualcomm message to his fleet manager asking that he not be put on another load because he might have to fly out. The fleet manager, who is no longer employed with CRST, told the claimant that was okay and instructed him to keep him informed. The claimant's co-driver drove him to the bus station so he could get to an airport and fly to Arizona. On their way to the bus station, they were dispatched on a Conway load the next day and the claimant wrote back to his fleet manager and stated he had an emergency and had asked the fleet manager earlier not to give him another load. The fleet manager did not respond so the claimant proceeded to the bus station. The claimant maintained contact with whatever fleet manager was on duty when he called and notified the employer he had to stabilize his mother and get her in a nursing home and was told to contact the employer by July 11, 2011. On July 5, 2011, the claimant received a letter stating his employment would be terminated if he was not back by July 11, 2011, or made contact with the employer by that date. The claimant tried to contact the employer but believed his employment was terminated. The employer's records show the claimant abandoned his job, co-driver, and load June 8, 2011. The claimant

had not received any written or verbal warnings during his employment and had not had any tickets or accidents while working for the employer.

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). While the claimant was evasive in his testimony, because the fleet manager he worked with during the time frame in question is no longer working for the employer and thus was not available to testify, the claimant's first hand testimony must be given more weight than the employer's second hand testimony. The claimant stated he asked for emergency time off because of a situation involving his mother and was given permission to leave by the fleet manager and was told to keep the employer informed, which he did. He stated he did not quit his employment and never

had any intention of quitting his job. He was then told he had to return by July 11, 2011, but his employment was terminated July 5, 2011. Given that the testimony is conflicting, the employer lacks a first-hand witness, and the employer has the burden of proof, the administrative law judge must conclude the employer has not met its burden of proving the claimant quit his job or that he was discharged for disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 29, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw