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

MICHAEL D RIESBERG
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO: 11A-UI-04636-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/11
Claimant: Appellant (5)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 1, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account subject to charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Kate Bangs and Sandy Matt appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2010. He worked full time as an over-the-road driver.

Prior to February 9, 2011, the claimant's job was not in jeopardy. On February 9, a TA Truck Stop employee in Arizona called the local authorities and accused the claimant of eating a hotdog without paying for it. Although the claimant denied he ate a hotdog without paying for it, he was charged with shoplifting.

The claimant's attorney talked to the local prosecutor. The claimant accepted a plea bargain agreement that the claimant must perform 20 hours of community service. The employer understood the claimant admitted to shoplifting a hotdog and discharged him for violating one of the employer's rules of conduct.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting

work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish the claimant quit his employment. Instead the employer discharged him on February 9, 2011.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The issue in this case is whether the claimant ate a hotdog without paying for it. Even though the claimant denied he ate a hotdog at the truck stop in Arizona, he accepted a plea agreement. Without any other evidence to support the claimant's assertion that he did not eat a hotdog, the evidence indicates the claimant did not pay for a hotdog. Based primarily on the claimant's acceptance of a plea deal, the employer discharged the claimant for reasons constituting work-connected misconduct. As of February 13, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 1, 2011 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not quit his employment. Instead, the employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 13, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/css