

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE T QUILLINAN**  
Claimant

**APPEAL NO. 12A-UI-12396-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 09/09/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated October 4, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 7, 2012. Claimant participated. The employer participated by Ms. Sandy Matt, Human Resource Specialist.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Wayne Quillinan was employed by CRST Van Expedited from May 26, 2011 until August 31, 2012 when he was discharged from employment. Mr. Quillinan worked as a full-time over-the-road tractor trailer driver and was paid by the mile.

The claimant was discharged on August 31, 2012 after the claimant had accrued three chargeable accidents during the month of August 2012. In the first incident on August 3 the claimant backed into a parked trailer but failed to report it as required by company policy. On August 10 Mr. Quillinan struck the top portion of his trailer on a bridge and on August 29 the claimant hit a fixed object with his truck damaging a wheel as the claimant negotiated a scale.

Because of the recurring nature of the chargeable accidents that the claimant had suddenly accrued, the claimant was required to attend and satisfactorily pass a defensive driving course by the company. The claimant was discharged when he failed to pass the defensive driving portion of the test by failing to adequately stop and by exceeding the speed limit. Based upon the chargeable accidents and the claimant's failure to attend and pass the defensive driving course, a decision was made to terminate Mr. Quillinan from his employment.

It is the claimant's position that he did not intend to damage company equipment. He felt that the structure at the defensive driving was biased against him.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 insurance benefits. The focus is on culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence establishes that the claimant had three chargeable accidents within a one-month period. The incidents included backing, negotiating under bridges and negotiating on a scale. Because the accidents were preventable the claimant was required to attend and pass a defensive driving course in order to remain employed. Mr. Quillinan failed the test by not adequately stopping and exceeding the speed limit while being tested.

The administrative law judge concludes based upon the evidence in the record that the claimant's negligence was of such a recurrence so as to manifest culpability under the provision of the Employment Security Law. The claimant's failure to adequately stop and his

failure to maintain proper speed limits while being tested was in disregard of the employer's interests and standards of behavior. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated October 4, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css