

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMEAL P BAILEY
Claimant

APPEAL NO: 07A-UI-10842-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

**OC: 10/14/07 R: 12
Claimant: Respondent (1)**

Section 96.5-2-a- Discharge

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed a representative's November 15, 2007 decision (reference 01) that concluded Emeal P. Bailey (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2007. The claimant participated in the hearing. Sandy Matt, a human resource specialist, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 7, 2007. The claimant worked as a full-time over-the-road driver. Although the claimant had a preventable accident in July, his job was not in jeopardy. In early September, the employer made the claimant a trainer.

On October 7, 2007, as the claimant was driving on a curved ramp coming off an interstate, the load of phone books he had in his trailer shifted. The trailer and truck rolled over and overturned. Although the claimant explained the situation to the investigating office, the claimant received a citation for driving too fast under the conditions. (Employer Exhibit Three.) The claimant is currently contesting this citation. The damage caused by the accident is over \$108,000.00. (Employer Exhibit Two.)

On October 8, 2007, the employer discharged the claimant. The employer concluded the claimant violated safety procedures by driving too fast for the conditions.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

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).

Although the claimant received a citation for driving too fast for conditions, he is in the process of contesting the citation. On October 7 there was no extenuating road or weather conditions. Instead, as the claimant went around the curve on the ramp, the load he was hauling shifted in the trailer. As a result of the load shifting, the trailer overturned. Given the fact the employer recently made the claimant a trainer and there is no evidence that the claimant exceeded the speed limit, the facts do not establish that the claimant intentionally operated his tractor-trailer in a manner that disregarded the employer's interests. The facts also do not establish that the claimant acted in such a reckless or negligent manner that he committed work-connected misconduct. Therefore, as of October 14, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 15, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 14, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs