

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN S HORSFORD**  
Claimant

**APPEAL NO. 09A-UI-07731-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**Original Claim: 01/18/09  
Claimant: Appellant (2)**

Section 96.6-2 – Timeliness of Appeal  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated March 5, 2009, reference 01, that held he voluntarily quit without good cause attributable to the employer on November 20, 2008, and denied benefits.

A telephone hearing was scheduled for and held on June 10, 2009. The claimant participated. Sandy Matt, human resource specialist, participated on behalf of the employer. Claimant's Exhibit A was received as evidence.

**ISSUES:**

Whether the claimant filed a timely appeal.

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: The claimant was hired as a full-time over-the-road driver for the employer on November 7, 2007. The claimant had a valid CDL license at the time of hire, but he did not have an endorsement to carry hazardous materials.

The claimant last worked for the employer on November 20, 2008. The claimant had been told by his supervisor for the last two months of his employment that he needed to get a Hazmat endorsement on his license in order to drive. The employer does haul hazardous materials and it recently imposed a requirement that all drivers newly employed were required to make an application and obtain a Hazmat endorsement within 60 days of hire.

The claimant was sent home by his supervisor for "home time" on November 20, 2008, so that he may obtain his Hazmat endorsement. The claimant took some pre-tests but was unable to pass them, and he so advised his supervisor. The claimant was told that he could not return to employment unless he obtained his Hazmat endorsement. The employer has a policy of

carrying a driver on the board for a period of 21 days upon completion of a final assignment. When the claimant was unable to pass the Hazmat endorsement (license test) and return to work within 20 days, he was considered to have voluntarily left his employment by the employer.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that the claimant did not voluntarily quit his employment, but was discharged for no act of misconduct in connection with employment effective November 20, 2008.

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 claimant did not voluntarily quit his job, but was given some home time in order to obtain a Hazmat endorsement on his CDL license in order to continue in employment. The evidence in the record does not establish that this was a condition of employment at the time of hire, which is supported by the fact that he drove for almost one year for the employer prior to imposing this requirement. The claimant made a good-faith effort to obtain the Hazmat endorsement and his inability to do so is not job disqualifying misconduct.

The administrative law judge further concludes that the claimant did effect a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not receive the department decision dated March 5, 2009, and he was unaware of it until he received the overpayment decision that was mailed to him on May 13. The claimant effected a timely appeal within the ten-day period required by law when he mailed his appeal on May 22, 2009.

**DECISION:**

The department representative's decision dated March 5, 2009, reference 01, is reversed. The claimant did not voluntarily quit, but was discharged for no act of misconduct in connection with employment on November 20, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

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R. L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

srs/kjw