

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R SLATER
Claimant

APPEAL NO: 12A-UI-00370-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**OC: 12/11/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (employer) appealed a representative's January 4, 2012 decision (reference 01) that concluded William R. Slater (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2012. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf and presented testimony from one other witness, Eric Lake. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on March 10, 2010. He worked full-time as an over-the-road truck driver. His last day of work was August 19, 2011.

On Friday, August 19, the claimant and his co-driver dropped off their truck at the employer's Fontana, California terminal. The claimant was scheduled for four days of home time to take care of some medical issues; he had a doctor's appointment scheduled for August 22, of which he had made the employer aware. On Saturday, August 20, the claimant's co-driver contacted him and informed him that the employer had scheduled a load pick-up for that evening. The claimant responded that he was unable to leave at time because he was still scheduled for his Monday doctor's appointment. The claimant may also have had communications with a fill-in fleet manager/dispatcher for the employer at this time in which he indicated that he was

supposed to be home for the four days to take care of his medical issues and would not be available for a load until about August 24. The claimant proceeded to go to his doctor on August 22, and on August 23 got the necessary medication adjustments. On August 23 or August 24, he contacted his co-driver to indicate he was ready to leave; the co-driver informed him that he had proceeded to leave with the load and another driver on August 20. On about August 24, the claimant got a message from his regular fleet manager/dispatcher, Lake, indicating that if the claimant did not contact him immediately, he would be removed from the system. The claimant attempted several times over several days to reach Lake, but was not able to reach him directly, although he did speak to other of the employer's employees and did leave messages for Lake. When Lake did not have direct contact with the claimant for several days, the claimant was removed from the employer's system.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by failing to return to the truck or to the employer after his home time. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was the claimant was unable to return to the truck, as the truck had departed without him with a new driver while he was on an excused leave, and because the employer failed to respond to the claimant's attempts to return to the employment, presumably because of miscommunication issues within the employer's organization. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 4, 2012 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw