

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RAUL VILLARREAL
517 S RAMPART BLVD APT 311
LOS ANGELES CA 90057

CRST INC
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216 1160

Appeal Number: 05A-UI-00069-DWT
OC: 11/28/04 R: 12
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed a representative's December 22, 2004 decision (reference 01) that concluded Raul Villarreal (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 January 19, 2005. The claimant participated in the hearing. Sandy Matt, a human resource specialist, appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Five 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.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 22, 2004. He worked as a full-time over-the-road driver. The claimant received a copy of the employer's policies. The employer's policy informs employees they can be discharged if they have a positive drug test. (Employer's Exhibits 2 and 5) In accordance with the U.S. Department of Transportation regulations, the employer randomly tests drivers for drugs.

On October 7, 2004, the claimant's name was randomly chosen to submit to a drug test. The claimant submitted to the drug test on October 7, 2004. After a medical review officer received the results of the test, he informed the claimant he had a positive test. (Employer Exhibit 4). The medical review officer asked the claimant about any prescription medication or over-the-counter medications the claimant had taken prior to the test. The claimant told him about flu medicine and inhalants he had recently taken. After talking to the claimant, the medical review officer informed the employer that the claimant had failed the drug test. The employer discharged the claimant on October 11, 2004, for failing a drug test.

The claimant established a claim for unemployment insurance benefits during the week of November 28, 2004. The claimant filed claims for the weeks ending December 4, 2004 through January 15, 2005. He received his maximum weekly benefit amount of \$197.00 for each of these weeks.

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 §96.5-2-a. The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug or alcohol test performed in violation of Iowa's drug and alcohol testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). However, Iowa's drug and alcohol testing laws under Iowa Code §730.5 do not apply to employees required to be tested pursuant to federal statutes or regulations. Iowa Code §730.5(2).

The claimant, an over-the-road driver, is subject to U.S. Department of Transportation law 49 U.S.C. §31306. Pursuant to this statute, the employer required the claimant to submit to a random drug test. The positive drug test establishes the claimant intentionally violated the employer's drug policy. The employer, by a preponderance of the evidence, established the claimant was discharged for work-connected misconduct. As of November 28, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending December 4, 2004, through January 15, 2005. He has been overpaid \$1,379.00 in benefits that he received for these weeks.

DECISION:

The representative's December 22, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 28, 2004. 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. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending December 4, 2004, through January 15, 2005. The claimant has been overpaid \$1,379.00 in benefits he received for these weeks.

dlw/b