

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI R BEAUCHAMP
Claimant

APPEAL NO. 12A-UI-14415-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 11/04/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lori Beauchamp (claimant) appealed a representative's November 28, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with CRST Van Expedited (employer) for having too many accidents for which she was found at fault. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 11, 2013. The claimant participated personally and through her former co-worker, Steven Rutherford. The employer participated by Sandy Matt, Human Resource Specialist. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 11, 2010, as a full-time over-the-road driver. The claimant signed for receipt of the employer's handbook on November 10, 2010. The claimant had two preventable accidents and on January 27, 2011, the employer sent the claimant to a retraining class for defensive driving.

On October 26, 2012, the claimant was on Interstate 80 in northern California driving into San Francisco. The road had ruts and the claimant pulled to the outside lane even though she was advised not to do so by the employer during training. The claimant was unsure whether the tractor trailer was pulling to the right due to the ruts in the road or due to problems with the tractor trailer. The claimant pulled the tractor trailer into the outside lane and continued at the posted speed limit of 55 miles per hour. As she progressed up a hill her speed dropped to approximately 52 miles per hour.

At 5:45 a.m. it was dark and she was looking in her rearview mirror at her trailer and did not see a car parked three feet off the white line into the shoulder. The claimant sideswiped the parked car and moved it eight to ten inches further away from the fog line. The passenger in the

vehicle was taken to the hospital. The employer terminated the claimant on November 5, 2012, after the accident was determined to be preventable.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 28, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs