

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L ACKELSON
Claimant

APPEAL NO. 09A-UI-17033-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 10/18/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (CRST) filed an appeal from a representative's decision dated November 4, 2009, reference 01, which held that no disqualification would be imposed regarding Robert Ackelson's separation from employment. After due notice was issued, a hearing was held by telephone on December 16, 2009. The employer participated by Sandy Matt, Human Resources Specialist, and Mustafa Samiwala, Training Manager. Exhibits One and Two were admitted on the employer's behalf. Mr. Ackelson did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Ackelson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ackelson was employed by CRST from September 24, 2008 until October 16, 2009 as an over-the-road driver. He was discharged for violating the employer's standards. The employer's decision was prompted by pictures taken by a student driver who rode with Mr. Ackelson.

In one of the pictures, it appears that Mr. Ackelson is using his cell phone to send a text message. The employer's policy prohibits the use of cell phones while operating the vehicle. In the other picture, he is looking at the QUALCOMM satellite located in the center console of the tractor. Mr. Ackelson was discharged the same day the pictures came to the employer's attention. The above matters were the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). There must be substantial misconduct to support a disqualification from benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The administrative law judge does not doubt that Mr. Ackelson's conduct in sending text messages while driving presented a safety concern. However, there was no evidence that he made a practice of using his cell phone while driving. The administrative law judge cannot assume on the basis of one picture that he made a practice of using his cell phone while driving. Although one isolated violation may have been sufficient to discharge him, it is not sufficient to establish a willful or wanton disregard of the employer's standards or interests. The same is true with respect to the picture of Mr. Ackelson looking at the satellite display.

It was well within the employer's prerogative to discharge Mr. Ackelson for violation of its standards. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as substantial misconduct has not been established, benefits are allowed.

DECISION:

The representative's decision dated November 4, 2009, reference 01, is hereby affirmed. Mr. Ackelson was discharged by CRST but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css