

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAAGHIB K SATTAAR EL**  
Claimant

**APPEAL NO. 09A-UI-18345-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST FLATBED REGIONAL INC**  
Employer

**OC: 10/04/09**  
**Claimant: Appellant (2)**

Section 96.5-2-A -- Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 4, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 19, 2010. Claimant participated. Employer participated by Sandy Matt, human resources specialist. The record consists of the testimony of Sandy Matt; the testimony of Raaghib Sattaar El; and Employer's Exhibits 1-7.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case, CRST Flatbed Regional Inc., is a division of CRST International. On April 30, 2008, the claimant started working for CRST Van Expedited Inc, which is another division of CRST International. CRST is a trucking company and the claimant was an over-the-road trucker. The claimant transferred to CRST Flatbed Regional Inc. in September 2008. His last day of work was October 3, 2009, which is also the date of termination.

The incident that led to the claimant's termination occurred on October 3, 2009. The claimant was driving his truck and was on his way to pick up another driver. He was going up a hill at approximately 60 miles per hour. Another truck was in the right hand lane and was moving slowly at approximately 25 to 30 miles per hour. The truck ahead of the claimant did not have lights. The claimant rear ended this truck and totaled his vehicle. Law enforcement responded to the scene. The claimant was not given a citation. The claimant believes that the other driver did receive a ticket. No personal injury resulted from the accident.

The claimant was then terminated by the employer because the employer believed that the claimant had now had a total of three preventable accidents. On September 16, 2009, the

claimant hit the side of a passenger car that had parked next to the truck while the claimant was sleeping. The claimant also reported a possible accident that might have occurred on December 4, 2008, when he was entering a UPS parking lot. The other truck disappeared and the claimant had no idea if there had been accident but reported that he might have hit the rear of the trailer with his vehicle. There was no property damage.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the duty a worker owes to the employer. The definition of misconduct excludes ordinary negligence in isolated instances. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

After carefully considering the evidence in this case, the administrative law judge concludes that there is insufficient evidence to show a current act of misconduct. The claimant was terminated for an accident that occurred on October 3, 2009. The claimant rear-ended another truck that was driving very slowly and was not properly lit. The claimant did not see the truck before striking it with his vehicle. Law enforcement did not issue a citation to the claimant.

Although the employer deemed this to be a preventable accident, the claimant does not appear to have been at fault. At best he was negligent. Ordinary negligence is not misconduct. Because there is no current act of misconduct, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated December 4, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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