

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TAMMIE K CHENEY**  
Claimant

**CRST VAN EXPEDITED INC**  
Employer

**APPEAL NO. 14A-UI-06330-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/18/14  
Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 12, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 11, 2014. Claimant participated personally, and was represented by counsel. Employer participated by Karen Carlson. Employer's Exhibits 1-5 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 16, 2014. Employer discharged claimant on May 16, 2014 because claimant allegedly did not follow a company notice in regards to a change in the grace periods granted truck driver repayments for loans.

Claimant oversaw new drivers' training and purchasing of trucks. A company directive was handed down saying that no grace period on loan repayment was going to be given to existing drivers. Claimant gave a grace period to the one existing driver who was in a class with 24 new drivers. All drivers received the same contract allowing for a grace period.

The court received much hearsay evidence from employer's representative about conversations that allegedly occurred between claimant and the gentleman given a grace period, and conversations between the gentleman given the grace period and claimant's supervisor. Claimant denied this exchange. She stated that she said nothing in a negative manner about anyone else.

The directive from the director of operations was emailed on February 7, 2014. The lease was signed sometime before March 7, 2014. Claimant stated that all new drivers (and the gentleman given the grace period) were given large packets of lease materials at or around the

date of the directive. She had not intended for this driver to be treated differently, but believed he, along with all of the other drivers, to be a new lessee.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code § 17A.14(1). Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. Iowa Admin. Code r. 871-24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. Crosser v. Iowa Dep't of Pub. Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence presented by the employer in this case consisted of hearsay. The individual who reported the information did not participate in the hearing. There is no indication as to why they could not have participated in the hearing. The administrative law judge had no opportunity to evaluate the credibility of the testimony. Absent the hearsay testimony, the administrative law judge is left to consider only claimant's statement that there was no intent to violate the company policy. Accordingly, there is no credible evidence on which to base a finding of misconduct.

The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated June 12, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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