

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY J HAGERMAN

Claimant

APPEAL NO. 13A-UI-07866-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 05/26/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

CRST Van Expedited (employer) appealed a representative's June 24, 2013, decision (reference 01) that concluded Jeremy Hagerman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 30, 2013. The claimant participated personally. The employer participated by Angie Stastny, Director of Human Resources, and Jamie Norman, Driver Development Person.

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 December 20, 2004, as a full-time manager of facilities. The claimant signed for receipt of the employer's handbook. The employer has a no-tolerance sexual harassment policy. The employer did not issue the claimant any warnings during his employment.

On May 25, 2013, the employer discovered that the claimant was making sexually inappropriate comments to co-workers. The claimant told new employees a story about a previous employee who rubbed a steak on his genitals. In addition, the claimant suggested that the male drivers get their own rooms while female recruiters cover their heads, disrobe and walk by the rooms. The claimant thought it would be like a peep show. The employer terminated the claimant on May 28, 2013.

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). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's June 24, 2013 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/css