

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDRIC D SCOTT
Claimant

APPEAL NO. 08A-UI-05559-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

OC: 03/16/08 R: 12
Claimant: Respondent (1)

871 IAC 23.43(9)A – Relief from Charges

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated June 6, 2008, reference 01, that held the employer potentially chargeable for unemployment insurance benefits paid to the claimant under an interstate claim. After due notice, a telephone conference hearing was scheduled for and held on June 30, 2008. The claimant participated. The employer participated by Sandy Matt, Human Resource Specialist.

ISSUE:

The issue in this matter is whether the claimant was discharged under disqualifying conditions and whether the employer's account is subject to potential charging.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 21, 2007 until February 18, 2008 as an over-the-road tractor trailer driver.

The claimant was discharged on February 19, 2008 based upon the employer's perception that the claimant had refused a pre-employment drug test for another company with a separate distinct tax identification number. Mr. Scott had attempted to the best of his ability to provide a urine specimen but had been unable to do so and the claimant's inability to provide the test had been labeled as a "refusal" by the testing facility. Proper procedures for the urine testing had not taken place and the claimant had not intentionally failed to provide a specimen. The employer is potentially liable for charging under the interstate compact for the payment of unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Scott was discharged for misconduct in connection with his employment. It does not. It further questions whether the employer is subject to potential charging of its unemployment account, it is.

The evidence in the record establishes that Mr. Scott was discharged from his employment with CRST based upon his inability to provide a urine specimen for testing for new employment with a different company. The evidence establishes that reasonable test procedures were not followed and that the claimant did not intentionally fail to provide a specimen. As the claimant's separation was nondisqualifying, the employer is potentially liable for charging for unemployment insurance benefits received by this claimant based upon provisions of interstate compact for the payment of unemployment insurance benefits.

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.

For the reasons stated herein the administrative law judge concludes that the claimant's discharge took place under nondisqualifying conditions. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 6, 2008, reference 01, is hereby affirmed. The claimant was separation under nondisqualifying conditions. The employer is potentially

chargeable for benefits paid to the claimant based upon the claimant's separation from employment.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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