

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LORI L MCBURNEY
2696 PARIS RD
CENTRAL CITY IA 52214

CRST INC
c/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-03999-DWT
OC 03/07/04 R 03
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-a – Voluntary Quit for Other Employment
Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed a representative's March 31, 2004 decision (reference 01) that concluded Lori L. McBurney (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2004. The claimant participated in the hearing. Bob Freeman, the director of human resource, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant worked for the employer from October 13, 1997 through February 4, 2003. The claimant quit on February 4, 2003 for another job. The employer rehired the claimant in September 2003. When the employer rehired the claimant she worked as a full-time manager of driver recruits. Her supervisor was Larry Shaevitz.

The employer's email policy informed employees the employer would not tolerate an employee abusing the employer's email system by using the email system excessively for personal reasons. The claimant and co-worker started using the employer's email to argue with one another. The claimant and co-worker had been involved in a personal relationship. The emails between the two of them started in December or January. The claimant and the co-worker exchanged 0 to 20 emails a day. The claimant did not say anything to anyone about the emails because she thought she could handle the matter privately. When the claimant used the employer's email system, no one complained about the claimant's job performance.

On March 11, 2004, the owner went to talk to the claimant about business-related matters. While he was at the claimant's desk, he noticed the claimant typing a personal note. As a result of this observation, the employer had the claimant's computer screened and found many, an excessive number of emails between the claimant and co-worker. Based on the excessive number of emails exchanged between the two of them, the employer decided to discharge the claimant. Prior to March 11, 2004, the claimant's job was not in jeopardy and the employer had no knowledge of any previous problems. The employer discharged the claimant on March 11, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. There are two separations in this case.

The first separation occurred when the claimant quit her employment on February 4, 2003 after she had accepted another job. The law provides that when a claimant quits employment because she has accepted other employment, the claimant is not disqualified from receiving benefits and the employer's account will not be charged. Iowa Code §96.5-1-a. The wages the claimant earned during her first employment are wages that are included in her base period wages.

The second employment started in September 2003. Wages the claimant earned from September through March 11 are not part of the claimant's current base period wages. The employer discharged the claimant on March 11, 2004. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may

be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally or substantially disregarded the employer's interests when she and a co-worker used the employer's email system to converse about a personal matter. The claimant used extremely poor judgment when she continued using the employer's email system to defend her position in a personal matter involving a co-worker. Although the employer concluded the claimant's personal email usage was excessive, there is no evidence the claimant's work performance was affected by the time she spent sending email messages to the co-worker. The claimant knew other employees used the employer's email for personal reasons. At least one employee used the email system to sexually harass another employee and was not discharged. Under the facts of this case, the evidence does not establish that the claimant knowingly committed work-connected misconduct. As of March 7, 2004, the claimant is qualified to receive unemployment insurance benefits.

The wages the claimant earned from the employer that are in her base period are not subject to charge because the claimant voluntarily quit her employment after she accepted another job. Iowa Code §96.5-1-a. The wages the claimant earned during her second period of employment are not part of her base period wages during her current benefit year. Therefore, the employer's account will not be charged during the claimant's current benefit year.

DECISION:

The representative's March 31, 2004 decision (reference 01) is modified in the employer's favor. There are two separations that must be considered. The first separation occurred on February 4, 2003, when the claimant quit to accept another job. The second separation occurred after the employer rehired the claimant in September 2003 and discharged her on March 11, 2004 for reasons that do not constitute work-connected misconduct. Based on the reasons for the March 11, 2004 discharge, the claimant is qualified to receive unemployment insurance benefits as of March 7, 2004, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

dlw/kjf