

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL K MARSHALL**  
Claimant

**APPEAL NO. 09A-UI-03958-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 02/08/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

CRST Van Expedited, Inc. (CRST) filed an appeal from a representative's decision dated March 2, 2009, reference 01, which held that no disqualification would be imposed regarding Michael Marshall's separation from employment. After due notice was issued, a hearing was held by telephone on April 7, 2009. Mr. Marshall participated personally. The employer participated by Sandy Matt, Human Resources Specialist, and Matt Reyhons, Fleet Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Marshall was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Marshall was employed by CRST from April 2, 2008 until January 26, 2009 as an over-the-road driver. The employer has a written work rule, a copy of which was provided to Mr. Marshall at the time of hire, that prohibits drivers from making U-turns. The rule provides that making a U-turn will result in disciplinary action up to and including termination.

On or about January 26, the employer learned from Mr. Marshall's co-driver that he had made a U-turn while operating the employer's vehicle approximately one week earlier. The incident occurred outside Troy, Ohio. While making the turn, the vehicle's front right tire became stuck in the shoulder and the police were called. Mr. Marshall was ticketed for making a U-turn. Although he was in daily contact with his dispatcher, he did not advise the employer of the ticket. When questioned about the incident on January 26, he indicated he made the turn because he was lost. He was discharged the same day. His violation of the U-turn policy was the sole reason for the separation.

Mr. Marshall filed a claim for job insurance benefits effective February 8, 2009. He has received a total of \$952.00 in benefits since filing the claim.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. Mr. Marshall was discharged after he deliberately and intentionally violated the employers' policy regarding U-turns. The fact that he was lost was not justification for violating the policy. The administrative law judge appreciates that he wanted to avoid the additional mileage that may have been required for him to find an appropriate location to turn around. By prohibiting U-turns, the employer knew or should have known that a driver might have to travel additional miles in order to avoid violating the policy if they needed to turn around. Traveling the additional miles was more consistent with the employer's interests than making the prohibited U-turn.

Mr. Marshall's intentional violation of policy constituted a substantial disregard of the type of behavior he knew the employer expected of him. Therefore, benefits are denied. Mr. Marshall has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Marshall will be required to repay benefits already received.

**DECISION:**

The representative's decision dated March 2, 2009, reference 01, is hereby reversed. Mr. Marshall was discharged by CRST for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages in insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Marshall will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css