

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAUDE H WILLIAMS
Claimant

APPEAL NO. 12A-UI-08030-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 06/10/12
Claimant: Respondent (1)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 28, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 25, 2012. Claimant Claude Williams participated. Sandy Matt, human resources specialist, represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claude Williams was employed by CRST Van Expedited as a full-time, over-the-road truck driver from August 2011 until March 31, 2012. Mr. Williams' usual supervisor was Fleet Manager Zach Klein. Mr. Williams was required to operate the employer's truck as part of a driving team and Mr. Williams had a co-driver. Mr. Williams resided in Maryland.

Fleet Manager Patrick Ralph supervised the run. Mr. Williams and his co-driver had to go to Pennsylvania to pick up the semi tractor. They then had to pick up a trailer in New Jersey. They then had to travel through New York and cross into Canada to pick up a load of freight bound for California. On their way back across the border into New York, border patrol detained Mr. Williams, his co-driver, and the tractor-trailer. The tractor and trailer were both missing proper licensing tags. There was no registration in the tractor. Mr. Williams received additional citations because his New York driving privileges had previously been suspended or revoked by the State of New York. The border patrol advised the pair that Mr. Williams could not operate the rig in New York, but could operate the rig once the pair was outside New York.

By the time the two men were released by border patrol, the load of freight was well behind schedule. The pair was concerned that the lack of tags on the tractor and trailer would set them up to be stopped repeatedly on their way across the country to California. When the co-driver made contact with Fleet Manager Patrick Ralph to discuss the situation, Mr. Ralph was furious. The load was going to a new customer. Mr. Ralph was most furious about the issues with

Mr. Williams' New York driving privileges. Mr. Williams heard Mr. Ralph tell the co-driver that once they got to California, Mr. Williams' employment would be done. Mr. Williams got on the phone with Mr. Ralph and Mr. Ralph confirmed that once the load was in California, Mr. Williams was discharged from the employment. Mr. Williams told Mr. Ralph that he had not known there were issues with his New York driving privileges. Mr. Ralph confirmed that once the load of freight made to California, Mr. Williams' employment was done. Mr. Williams heard Mr. Ralph tell the co-driver that he would need to find another driving partner.

The pair stopped at the Pennsylvania yard and Mr. Ralph once again confirmed that Mr. Williams' employment would be done once the freight was in California. Mr. Williams was concerned that he would be stranded in California with no way back to his home in Maryland. Mr. Williams had his co-driver drop him at his home in Maryland.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence establishes that the employer discharged Mr. Williams from the employment when Mr. Ralph notified Mr. Williams that his employment would be ended once the load of freight arrived in California. Under the circumstances, it was reasonable for Mr. Williams to have the co-driver drop him at his home in Maryland to avoid being stranded on the other side of the continent.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 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. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not present testimony from anyone with firsthand, personal knowledge of the events leading to Mr. Williams' separation from the employment. The employer had the ability to present such testimony. The weight of the evidence indicates that Mr. Ralph discharged Mr. Williams from the employment based on the delayed freight and the issues related to Mr. Williams' New York driving privileges. The employer had failed to present sufficient evidence to rebut Mr. Williams' assertion that he was unaware that he lacked driving privileges in New York. The bulk of the problems with the load of freight were attributable to the employer not having proper license tags or registration documentation with its tractor-trailer. None of that would be Mr. Williams' fault. Nor would Mr. Williams be responsible for his co-driver oversleeping. The weight of the evidence fails to establish misconduct on the part of Mr. Williams.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Williams was discharged for no disqualifying reason. Accordingly, Mr. Williams is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Williams.

DECISION:

The Agency representative's June 28, 2012, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw