

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PIERRE L WASHINGTON
Claimant

APPEAL NO. 09A-UI-01873-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 10/19/08 R: 12
Claimant: Respondent (2)

871 IAC 23.43(9)a – Cross Wage Claim Relief of Charges
Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 30, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 26, 2009. Employer participated by Matt Hoffman, Fleet Manager, and Sandy Matt, Human Resource Specialist. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer's account can be relieved of charges and whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on October 16, 2008.

Claimant was discharged on October 16, 2008 by employer because claimant did not call in or report to work. Claimant had two prior warnings on his record for delivering late loads. Claimant was late delivering a load on October 16, 2008 just three days after his final warning. Claimant's excuse was that he read the load report incorrectly.

The claimant has a cross wage claim with another state but earned wages from this employer in Iowa.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant violated a known company rule on delivering loads on time after a final warning. This is misconduct. The two prior warnings weigh heavily toward a finding that claimant was careless in delivering loads in a timely manner. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees. It shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits denied.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the

amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

The employer's account is not chargeable based upon this separation.

DECISION:

The January 30, 2009, reference 01, decision is in favor of the appellant. The claimant was discharged from employment due to job-related misconduct; however, this decision does not affect claimant's benefit status in the other state. The employer's Iowa account number 039128 shall not be charged, as the separation is disqualifying in Iowa.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw