

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HERMAN H SARDUY**  
Claimant

**CRST VAN EXPEDITED INC**  
Employer

**APPEAL 21A-UI-11867-AR-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/14/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On April 14, 2021, claimant, Herman H. Sarduy, filed an appeal from the April 9, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit his employment with the employer, CRST Van Expedited, Inc., without showing good cause for having done so. The parties were properly notified about the hearing held by telephone on July 14, 2021. The claimant participated personally. The employer did not participate. Claimant's Exhibits A and B were admitted to the hearing record.

**ISSUE:**

Did the claimant quit his employment without good cause attributable to the employer, or did the employer discharge claimant for job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a shuttle bus driver beginning in April 2014, and was separated from employment on March 9, 2021, when he was discharged.

On March 8, 2021, claimant received a call from HR Business Partner Michael Doyle saying that the employer had received a complaint indicating that claimant had sent a text message to a former employee that she found offensive. The employer did not identify the person who submitted the complaint, nor did it provide claimant with information regarding the contents of the text message. Claimant later learned that the person who submitted the complaint was a former employee with whom he had a friendship. She had not been employed by the employer for approximately two years. Claimant did not think that anything he said to her in conversation was objectionable. Furthermore, any conversation with her had occurred while claimant was off duty.

On March 9, 2021, claimant's supervisor, Richard Robinson, and Robinson's assistant, Molly, called claimant into a meeting and informed him of his termination. They indicated the termination had been directed by Human Resources, and that it was not their choice.

Claimant had never received warnings for similar conduct during his employment. The only counseling he received regarded unrelated behavior associated with claimant's work performance. Claimant was not aware that his job would be in jeopardy due to any of his conduct.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 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.

Iowa Admin. Code r. 871—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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, claimant testified that he did not quit, and did not intend to sever the employment relationship with the employer. Rather, he was involuntarily discharged. His separation was a discharge.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Id.*

Under the definition of misconduct, for purposes of determining eligibility for unemployment insurance benefits, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Generally, for off-duty conduct to be disqualifying, the employer must show that the employee's conduct: (1) had some nexus with the work; (2) resulted in some harm to the employer's interest; and, (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. See also *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988) (quoting *Nelson v. Dep't of Emp't Sec.*, 655 P.2d 242 (WA 1982)); 76 Am. Jur. 2d, Unemployment Compensation §§ 77-78.

The employer has not demonstrated that claimant's off-duty conduct had more than a distant nexus with work, resulted in harm to the employer's interest, or that it was done with any intent that the employer's interests would suffer. Claimant credibly testified that he did not believe his conduct to be objectionable, nor did he believe his conduct to be reflective of the employer or the employer's interests in any way. Furthermore, claimant had never received a warning from the employer for the same or similar conduct in the past, regardless of when or where the conduct occurred. Claimant did not know his job was in jeopardy. Claimant acknowledged that

the employer takes harassment very seriously; he did not believe that his conversation with the former employee constituted harassment.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as claimant was not warned previously for similar conduct, and the conduct was not work-connected, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

**DECISION:**

The April 9, 2021, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

July 23, 2021  
Decision Dated and Mailed

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