

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY P HICKS

Claimant

APPEAL NO. 10A-UI-00639-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

**Original Claim: 11/15/09
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 January 5, 2010, reference 01, which held that no disqualification would be imposed regarding Rodney Hicks' separation from employment. After due notice was issued, a hearing was held by telephone on March 29, 2010. Mr. Hicks participated personally. Exhibits A, B, and C were admitted on his behalf. The employer participated by Sandy Matt, Human Resources Specialist.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hicks began working for CRST on July 18, 2008 as an over-the-road driver. He last performed services on April 23, 2009. He left the employment after learning that his commercial drivers license (CDL) had been cancelled.

Mr. Hicks initially obtained his CDL through Tennessee. He later converted it to a Maryland CDL. In a letter dated February 18, 2009, the Maryland Motor Vehicle Administration notified Mr. Hicks that he had to be retested in order to retain his CDL. The reason given was that the third-party testing company that administered the skills testing for his Tennessee CDL had failed to administer the testing within required guidelines. Therefore, the third-party agreement was revoked by Tennessee. Mr. Hicks was given 30 days from February 18 in which to pass the required tests without having to obtain a learner's instructional permit.

Because he was on the road for his job, Mr. Hicks did not immediately learn of the February 18 letter. He did not learn there was a problem with his CDL until April of 2009. His brother was living at the address to which Maryland directed the February 18 letter. Mr. Hicks was not checking his mail with his brother. As of the date of the hearing herein, he still did not have a CDL and, therefore, has been unable to reoffer his services to CRST.

Mr. Hicks filed a claim for job insurance benefits effective November 15, 2009. He has received a total of \$5,499.50 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. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It is clear that CRST could not continue to employ Mr. Hicks, as he no longer had the CDL needed for his job. The issue then becomes whether his failure to have a CDL constituted misconduct within the meaning of the law.

Where an individual's own conduct renders him unemployable by his employer, he is guilty of misconduct. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). It is the employee's responsibility to maintain his CDL. If Mr. Hicks had timely responded when Maryland notified him of the problem, it is more likely than not that he would have been able to take steps to retain his CDL. He was not checking his mail while on the road. Had he not ignored his mail, he could have taken care of the matter before he actually lost the CDL. It must be concluded that it was Mr. Hicks' own conduct that eventually led to him losing his CDL and, consequently, his job. Therefore, he is not entitled to job insurance benefits.

Mr. Hicks has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. 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 benefits already received will have to be repaid.

DECISION:

The representative's decision dated January 5, 2010, reference 01, is hereby reversed. Mr. Hicks was discharged by CRST for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Hicks will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw