

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH L WEAVER
Claimant

APPEAL NO. 13A-UI-09408-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 07/14/13
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 6, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, hearing was held on August 29, 2013, by telephone conference call. The claimant did not respond to the hearing notice and did not participate in the hearing. The employer participated by Marsha Gibson, Unemployment Consultation with Equifax Workforce Solutions; Sandy Matt, Human Resources Specialist; and Therese Strellner, Senior Fleet Manager. The record consists of the testimony of Sandy Matt; the testimony of Therese Strellner; the testimony of Marsha Gibson; and Employer's Exhibits 1-3.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a transportation company. The claimant was hired on November 20, 2012, as a full-time over-the-road driver. His last day of work was May 24, 2013. He was termination on May 28, 2013.

The incident that led to the claimant's termination occurred on May 28, 2013. The claimant's co-driver, Larry, reported to the employer that the claimant had another person in the truck. This female was not authorized to be in the truck. The employer has a zero-tolerance policy against the transportation of unauthorized persons. It is a violation of federal rules applicable to the claimant as a driver. The claimant had been previously disciplined on the preceding Friday after he was observed driving bob tail and speeding and weaving in and out of traffic. He was told that he would be given "one more shot" and if there were any other violations of employer

policy, he would be terminated. The employer prohibited driving a truck bob tail as a personal transportation vehicle. The claimant was aware of these work rules.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence showed that the claimant violated an employer policy against unauthorized persons in the truck on May 28, 2013. He had been warned the preceding Friday that any further violations against employer rules would lead to termination. On that preceding Friday, the claimant was disciplined after he was seen driving the truck bob tail and speeding and weaving out of traffic. This shows a pattern of disregarding the employer's reasonable policies. The claimant's conduct is best characterized as insubordination. Insubordination is misconduct. Benefits are denied.

The next issue is whether the claimant has been overpaid unemployment insurance benefits. The Claims Section has not made a determination on whether the employer participated in the

fact finding and the fact finding documents have not been mailed to the parties. The overpayment issue is remanded to the Claims Section for a determination on the amount of the overpayment and whether the benefits should be repaid by the claimant or charged to the employer due to the employer's participation in fact finding.

DECISION:

The decision of the representative dated August 6, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css