

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD N VERMA
Claimant

APPEAL NO. 07A-UI-02366-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

OC: 01/07/07 R: 12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

CRST (employer) appealed a representative's February 27, 2007 decision (reference 01) that concluded Todd Verma (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2007. The claimant participated personally. The employer participated by Sandy Matt, Human Resources Specialist.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 15, 2006, as a full-time over-the-road driver. The employer issued the claimant no warnings during his employment. The claimant was on home time from December 10 to 16, 2006. He contacted his employer on December 17, 2006, and requested time to be with his ill father in Georgia. The employer allowed the claimant time off on December 17, 18 and 19, 2006. He was to return to work on December 20, 2006.

On December 20, 2006, the claimant spoke with the fleet manager. The claimant requested additional time to take care of the family matter. The claimant's co-driver had quit and the employer wanted the claimant to move the employer's vehicle from Houston, Texas, to Oklahoma City, Oklahoma. The claimant was still in Georgia. Placing the vehicle in Houston, Texas, was something the claimant's co-driver had done. The claimant stated he needed time to get from Georgia to Texas. His request was denied and the conversation ended. The fleet manager telephoned the claimant again and told him he was terminated for failure to move the vehicle from Houston, Texas, to Oklahoma City, Oklahoma.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. One incident of failure to follow instruction does not constitute misconduct. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 27, 2007 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css