

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELLIOTT D FLOYD

Claimant

APPEAL NO. 11A-UI-10914-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 07/17/11

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. filed a timely appeal from a representative's decision dated August 9, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on September 13, 2011. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Sandy Matt, Human Resource Specialist and Mr. Kyle Brockmeyer, Fleet Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Elliott Floyd was employed by CRST Van Expedited, Inc. as an over-the-road tractor/trailer driver from November 24, 2010 until his discharge on July 16, 2011. Mr. Floyd was paid by the hour. His immediate supervisor was his dispatcher, Kyle Brockmeyer.

Mr. Floyd was discharged for failing to follow a reasonable work-related directive and because he had taken a company tractor out of route 900 miles to his home without authorization.

Mr. Floyd had been dispatched to pick up a "high value" load in the state of Kentucky and to deliver it to its destination. Company policy requires employees to have loads scaled at or near the location where loads are picked up to insure that the load is legal and can be driven to its destination. The claimant failed to have the load in question scaled at its source. After traveling approximately 77 miles, Mr. Floyd encountered a weigh station in the state of Indiana where it was determined that the load was overweight. Mr. Floyd contacted the dispatcher about the matter.

Mr. Floyd was directed to return the load to its source to have the load re-configured so that the weight would be within DOT limitations. In the alternative, the claimant was instructed to remain with the load at the location in the state of Indiana. Mr. Floyd used an internal, Qual-Com communications system to contact his dispatcher and at that time indicated that the authorities at the scale would not let him return to the destination. The claimant at that time requested permission to detach the tractor from the trailer. The company dispatcher questioned Mr. Floyd's statement because the dispatcher found it unusual that scale house employees would not allow a driver to return a truck to its source for the load to be re-configured. Mr. Floyd was instructed specifically that his request to detach from the load was denied and that he should remain with the high value load at its location.

In spite of the specific directions that had been given to him by the company, Mr. Floyd detached from the trailer leaving the high value load at the scale location in Indiana and traveled without authorization to his home in Dallas, Texas in the company tractor. The company who had consigned the load became increasingly anxious about the situation and contacted the police. Subsequently, CRST Van Expedited, Inc. sent another tractor to the location at which time the driver was allowed to return the load back to its point of origin to be re-worked without objection or the issuance of any tickets by DOT authorities at the Indiana scale.

Although Mr. Floyd had been considered a good and valued employee in the past, he nevertheless was discharged based upon what the employer considered to be the serious nature of his violations of company policy and his intentional violations of work directives given to him.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in the record establishes that Mr. Floyd violated a number of CRST Van Expedited, Inc. company rules. The claimant did not have the load in question scaled at or near its location origin. Following this procedure the claimant would have been aware that the load was overweight and could have been merely returned to the shipper to be re-worked and put in compliance with DOT regulations. When the claimant stated to his dispatcher that scale personnel would not allow him to leave the scale with the load, the dispatcher was skeptical because that is not the normal practice followed. The dispatcher, therefore, in the alternative, instructed Mr. Floyd to remain with the load, however, the claimant did not follow those instructions. When Mr. Floyd contacted the dispatcher and requested permission to detach his tractor from the load, that permission was specifically denied. The claimant chose to ignore the specific and reasonable direction given to him at that time and traveled with the company tractor some 900 miles to Dallas, Texas where the claimant resides in violation of the company's "out of route" rules and the specific directive given to him by his dispatcher. When the company subsequently sent another truck and driver to the scale location in Indiana, the driver had no difficulty in returning the load to its origin to be re-worked without any objection from DOT personnel or the issuance of a ticket for doing so.

The administrative law judge concludes based upon the totality of the evidence in the record that Mr. Floyd was discharged for willful failure to follow reasonable and work-related directives that were given to him. Unemployment insurance benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable

employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated August 9, 2011, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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