

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOSE R VALLE-RUIZ
725 ADAMS ST
WATERLOO IA 50703

CRST INC
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-11381-HT
OC: 08/29/04 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated October 11, 2004, reference 02. The decision allowed benefits to the claimant, Jose Valle-Ruiz. After due notice was issued, a hearing was held by telephone conference call on November 18, 2004. The claimant provided a telephone number of (501) 960-8848. That number was dialed at 10:59 a.m. and the only response was a message machine. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 11:11 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Human Resources Specialist Sandy Matt.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jose Valle-Ruiz was employed by CRST from September 10, 2003 until June 9, 2004. He was a full-time over-the-road truck driver.

Mr. Ruiz had received verbal warnings about late deliveries and improper "deadheading." The latter offense is using the company truck on personal errands without being dispatched with a load. On June 7, 2004, the claimant was dispatched at 4:00 p.m. by Scott Nelson to pick up a load at the Cedar Rapids terminal and deliver it to Kansas between 6:00 a.m. and 8:00 a.m. the next day. Mr. Nelson discovered, on June 8, 2004, the trailer was still at the terminal and the satellite tracking of the truck showed Mr. Ruiz had "deadheaded" between his home in Waterloo and Cedar Rapids, three times the night of June 7 and 8, 2004.

The claimant was sent a message by the dispatcher to call in and finally responded on June 9, 2004. He was discharged for improper use of company equipment and failing to follow orders.

Jose Ruiz has received unemployment benefits since filing a claim with an effective date of August 29, 2004. A decision entered in Appeal 04A-UI-10542-RT on October 26, 2004, has found him overpaid \$390.00 as a result of a subsequent separation from another employer. This overpayment covers the same time period as the separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant had previously been warned about late deliveries and unauthorized deadheading. Instead of improving his performance, he deadheaded three times in one night between his home in Waterloo and the terminal in Cedar Rapids, without picking up the load or contacting the dispatcher. He put miles on the truck and used fuel paid for by the employer on a "joy ride" and has not provided any explanation for his conduct. He failed to complete the load he had agreed to take, resulting in a late delivery, which does not create good customer relations for the employer. The record establishes the claimant is guilty of conduct not in the best interests of the employer and he is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 11, 2004, reference 02, is reversed. Jose Valle-Ruiz is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/b