

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY WILEY**  
Claimant

**APPEAL NO. 13A-UI-09124-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 07/07/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated July 30, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on September 11, 2013, by telephone conference call. The claimant participated personally. The employer participated by Sandy Matt, Human Resources Specialist. The record consists of the testimony of Sandy Matt and the testimony of Terry Wiley.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses 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 December 9, 2010, as a full-time over-the-road driver. His last day of work was June 21, 2013. He was terminated on June 21, 2013.

The incident that led to the claimant's termination occurred on June 21, 2013. The employer must follow Federal DOT regulations, which require random drug tests for drivers. The claimant's name came up on the list that is generated monthly for random drug tests. The claimant was informed by his fleet manager that he needed to have a drug test taken in Aurora, Illinois. The claimant showed up at the clinic but he was unable to produce a large enough urine sample. He was told to wait in the waiting area. The claimant decided to get his truck, which was parked about two miles away. He left the clinic. The physicians refused to do the test when he returned. The employer considered the claimant's action to be refusal of a drug test. He was terminated due to that refusal.

## 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 was selected for a random drug test in accordance with federal DOT regulations. The claimant knew that he had to take this drug test in order to keep his job with the employer. Despite this knowledge, the claimant left the testing facility before the test was completed. His excuse, that he had to get his truck before a storm, is not a good reason for leaving the clinic. The claimant's actions are best characterized as insubordination, which is the continued failure to follow reasonable instructions. The administrative law judge concludes that the claimant's decision to leave the clinic before the drug test was completed was a knowing and deliberate violation of the employer's work rule. This is misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated July 30, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefits amount, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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