

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN L TRUDELL**  
Claimant

**APPEAL NO. 07A-UI-09910-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST INC**  
Employer

**OC: 09/30/07 R: 12**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated October 18, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 13, 2007. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Sandy Matt. Employer's Exhibits One and Two were received into evidence.

**ISSUE:**

The issues in this matter are whether the claimant was discharged for misconduct in connection with his work and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from April 10, 2003, until September 21, 2007, when he was discharged for violation of company policy. Mr. Trudell held the position of full-time over-the-road tractor trailer driver and was paid by the mile.

Mr. Trudell was discharged after he violated established company policy by making a "u-turn" while operating a company tractor trailer on September 20, 2007. The claimant was aware that making a u-turn with company equipment was a violation of a strict company safety policy that could result in his immediate termination from employment. The claimant indicated no extenuating circumstances that caused him to violate company policy.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions.

The evidence in the record establishes that Mr. Trudell was aware of the company policy that prohibited drivers from making u-turns while operating company equipment. The claimant was discharged after he made a u-turn on September 20, 2007, while operating company equipment.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct. Unemployment insurance benefits are withheld.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount \$780.00.

**DECISION:**

The representative's decision dated October 18, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant meets all other eligibility requirements of Iowa law. The claimant is overpaid unemployment insurance benefits in the amount of \$780.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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