

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDDIE ROLON

Claimant

APPEAL NO: 100-UI-04313-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 10/04/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (employer) appealed a representative's October 28, 2009 decision (reference 01) that concluded Eddie Rolon (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2010. The claimant participated in the hearing and was represented by Rodney Kleitch, attorney at law. Randy Koepecky appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 7, 2009. He worked full time as an over-the-road truck driver and trainer. His last day of work as an employee was September 9, 2009.

On or about August 26 the claimant's co-driver was responsible for an incident in which the truck's engine was blown on a steep decline while in the southwest en route to California. The co-driver was discharged due to the occurrence. The claimant got rerouted back to the employer's Cedar Rapids, Iowa terminal, arriving there on or about September 9. He believed he was simply going to be issued a new truck and paperwork. However, on September 10 he was brought in and informed by the employer he was no longer going to be allowed to drive with a co-driver or students provided by the employer; rather, he was told he could either go to independent contractor status with the employer and become an owner-leaser/operator, or his relationship with the employer would end. As a result, on September 10 he signed the paperwork to become an owner-leaser/operator so he could continue to work with the employer.

The employer subsequently terminated the claimant's independent contractor relationship on October 6, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. The circumstances regarding the ending of an independent contractor relationship between a business and an individual is not pertinent to a determination of whether the individual is eligible to receive unemployment insurance benefits; so long as the individual has sufficient base period wages earned in covered employment, only a disqualifying separation from "employment" will disqualify the individual from eligibility. Iowa Code § 96.5. "Employment" is work performed for wages or under a contract of hire, and excludes work performed in a true independent contractor relationship. Iowa Code § 96.19(18). The employer maintains that as of September 10, 2009 the claimant became an independent contract and was no longer an employee. The administrative law judge has no jurisdiction in this proceeding to rule to the contrary, and for purposes of this decision accepts that position as a correct reflection of the business relationship between the parties as of September 10. Therefore, anything that happened between the parties after September 10 that resulted in the ending of the independent contractor relationship the claimant then held with the employer is neither a quit nor a discharge from employment; it is not relevant to the determination in this case and will not be further considered. Rather, the focus of this decision is the September 10 ending of the employer-employee relationship that had previously existed between the parties.

The employer contends that the claimant quit his position as employee because he decided to become an independent contractor, rather than to continue as an employee. 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). However, Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant could have remained in his employment as an employee. The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; he did not have the option to continue his employment; he could either quit and become an independent contractor, or the employer would terminate his employment and end the working relationship completely. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an

employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was in essence the claimant's loss of his co-driver due to the co-driver's misoperation of the truck. While the employer may have had a good business reason for deciding not to pair the claimant up with any other drivers and forcing him to go to an independent contractor basis or cease operating with the employer entirely, the claimant's actions that led to the loss of his employment on September 10 were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 28, 2009 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs