

**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**

**STEVE S JOHNSON
15401 CASA GRANDE ST
MORENO VALLEY CA 92553**

**CRST INC
c/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 04A-UI-09582-AT
OC: 08-01-04 R: 12
Claimant: Respondent (1)**

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 for Misconduct

STATEMENT OF THE CASE:

CRST, Inc. filed a timely appeal from an unemployment insurance decision dated August 26, 2004, reference 01, which allowed benefits to Steve S. Johnson. After due notice was issued, a telephone hearing was held September 28, 2004 with Mr. Johnson participating and presenting additional testimony by Marcela Newsome. Human Resources Specialist Sandy Matt participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Steve S. Johnson was employed as an over-the-

road truck driver by CRST, Inc. from March 19, 2003 until he was discharged on June 16, 2004. Mr. Johnson had been on the road for nearly four weeks at the time of his discharge. He was on his way to make a drop in the Chicago area before taking time off to pick up his personal truck in Michigan and drive to Kentucky to visit his ailing father.

Mr. Johnson was delayed in the Chicago area by a load spill which required that the local HAZMAT team respond. Mr. Johnson received permission from dispatcher Betty Naplin to leave his truck in a secured parking area which he had used in the past and proceed to take time off. Ms. Naplin's supervisor, Jim Chapman, wanted Mr. Johnson to stay with his load. After Mr. Johnson argued that Ms. Naplin had already given permission, Mr. Chapman responded that he was going to play "hard ball" with Mr. Johnson and require that he return the truck to the Cedar Rapids terminal, some 240 miles away. When Mr. Johnson argued about doing so, Mr. Chapman discharged him.

REASONING AND CONCLUSIONS OF LAW:

The first step in the analysis of this evidence is to characterize the separation. Ms. Matt, relying on information from dispatcher Betty Naplin, characterized it as a quit. Ms. Matt had no firsthand information and had had no contact with Mr. Chapman. The employer's hearsay evidence is less persuasive than the testimony of Mr. Johnson which was corroborated in part by Ms. Newsome. The administrative law judge concludes that the separation was a discharge. The remaining question is whether Mr. Johnson was discharged for misconduct in connection with his work.

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 employer had the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer's evidence consisted entirely of hearsay testimony. It is clear from Mr. Johnson's testimony that he refused to follow Mr. Chapman's directive to return the truck to Cedar Rapids.

As a general rule, continued failure to follow reasonable instructions is misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Failure to perform a specific task is not misconduct if the failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). The administrative law judge must evaluate both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985).

The evidence in the record establishes that Mr. Chapman's order was made out of spite because Mr. Johnson, having been on the road for four weeks, insisted on taking some time off. Considering the length of time that Mr. Johnson had been on the road, the fact that his father was ill and the fact that he was leaving the truck in a secure parking area which he had used before, the administrative law judge concludes that the claimant was the more reasonable party in the dispute. No disqualification is imposed.

DECISION:

The unemployment insurance decision dated August 26, 2004, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provide he is otherwise eligible.

tjc/b