

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSS THOMPSON

Claimant

APPEAL NO. 13A-UI-11048-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 09/01/13

Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 20, 2013, (reference 03) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on October 24, 2013. Claimant participated. Employer participated through human resource specialist, Sandy Matt and workers' compensation claims specialist, Deb Mentzer. Employer's Exhibit 1 was received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an over-the-road driver from March 22, 2012, and was separated from employment on March 26, 2013. He was injured on the job on April 30, 2013. He began working light duty and receiving medical treatment in Oklahoma City, Oklahoma, through July 2012. At his request he was transferred to light-duty work in Cedar Rapids, Iowa, on November 28, 2012, where he could not do light duty but could work in the licensing department until January 4, 2013. On February 19, CRST workers' compensation specialist, Deb Metzger told claimant the employer would require him to work modified duty in Oklahoma City, because that is where his workers' compensation medical treatment was ordered, where his injury was, and where his claim was. He was upset and she told him that decision came from a vice president above her head and was out of her hands. She offered a bus ticket or reimbursement for the price of a ticket. He made it clear he would not go to Oklahoma because his girlfriend is in Iowa, and would contact his attorney, so Metzger did not order or pay for a bus ticket. On February 19 Metzger told him she would send a letter about his employment and fax it to his attorney. He did not get the February 21, 2013, letter which was sent by regular and certified mail to his then correct and current address. A copy was also faxed to claimant's attorney with

fax confirmation of delivery on the employer's end. (Employer's Exhibit 1) Neither claimant nor his attorney contacted the employer about a bus ticket, a perceived delay in getting a bus ticket, not getting the letter, or his employment status. He found out he no longer worked there in March 2013 when he spoke with someone about his workers' compensation claim. His workers' compensation claim settled on June 18, 2013 after he reached maximum medical improvement (MMI).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 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.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Since claimant and his attorney did not follow up with management or human resource personnel about any of the topics discussed up through February 19, and in the February 21 letter, and claimant's assumption of having been fired was erroneous, the failure to continue reporting to work or communicate with the employer was an abandonment of the job. Benefits are denied.

DECISION:

The September 20, 2013, (reference 01) decision is modified without change in effect. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css