

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

ANGEL A SOTO  
405 HAROW AVE  
MCFARLAND CA 93250

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

Appeal Number: 04A-UI-00416-RT  
OC: 12-07-03 R: 12  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, CRST, Inc., filed a timely appeal from an unemployment insurance decision dated January 9, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Angel A. Soto. After due notice was issued, a telephone hearing was held on February 4, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Brian Logan, Fleet Manager, and Sandy Matt, Human Resources Specialist, participated in the hearing for the employer.

The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### 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: The claimant was employed by the employer as a full-time lead truck driver from December 31, 2002 until he left his employment voluntarily on November 17, 2003. The claimant's last day of work was November 10, 2003 and he was on home time until an expected return date of November 17, 2003. The claimant did not return on that day. The employer attempted to call the claimant without success. The claimant called the employer on November 21, 2003 and told the employer that he would not be back for an unspecified amount of time. He indicated that he was going or had gone to Mexico. The claimant did not say why although someone else who spoke on the phone indicated there was some kind of a family emergency. The claimant has never returned to the employer and offered to go back to work. The claimant was not discharged. The claimant never expressed any concerns to the employer about his working conditions nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed by the employer. If the claimant had shown up for work on November 17, 2003, work would have remained available. In fact, work is still available for the claimant but he has not returned to work. Pursuant to his claim for unemployment insurance benefits filed effective December 7, 2003, the claimant has received no unemployment insurance benefits. Records show no weekly claims or any payments made to the claimant.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from the employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not, because he has received no benefits.

Iowa Code Section 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.

871 IAC 24.25(1), (2), (20), (23) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The administrative law judge concludes that the claimant left his employment voluntarily when he failed to show up for work as expected and scheduled on November 17, 2003 and, finally, when he called the employer on November 21, 2003 and told the employer that he would not be back for an unspecified amount of time because he was going or had gone to Mexico. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide evidence of reasons attributable to the employer for his quit. The employer's witnesses credibly testified that the claimant left his employment to go to Mexico and did not specifically say why and has not returned and offered to go back to work. Someone else who spoke to the employer on the phone indicated that the claimant may have gone back for a family emergency. However, leaving work to move to a different locality or for compelling personal reasons when the period of absence exceeds ten days as here, or leaving work due to family responsibilities or serious family needs are not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about his working conditions nor is there any evidence that the claimant ever indicated or announced an intention to quit if any of his concerns were not addressed by the employer. Even if the claimant had left his employment for the sole and necessary purpose of taking care of a member of the claimant's immediate family, there is no evidence that he actually did so or that the family member has recovered or that the claimant has returned and offered to go back to work and no employment was provided by the employer. See Iowa Code Section 96.5(1)(c).

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits.

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.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from his employment on or about November 17, 2003 and filing for such benefits effective December 7, 2003. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

**DECISION:**

The representative's decision of January 9, 2004, reference 01, is reversed. The claimant, Angel A. Soto, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

pjs/kjf