

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA J BINAU
Claimant

APPEAL NO: 07A-UI-03143-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

**OC: 03/04/07 R: 01
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Debra J. Binau (claimant) appealed a representative's March 23, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from CRST, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2007. The claimant participated in the hearing and presented testimony from one other witness, Ken Newberg. Sandy Matt 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 July 13, 2006. She worked full time as an over-the-road truck driver on a team with her husband, Mr. Newburg. Her last day of work was January 16, 2007.

On or about January 11 the claimant was involved in a discussion with the employer concerning her husband's health; he had suffered an incident of blacking out for which he needed to be seen by his doctor. It was agreed that the claimant would drive the truck back to the employer's terminal in Cedar Rapids, Iowa, where the claimant and her husband had left a vehicle, and that she would then be off work with him so she could take him to the doctor. The claimant drove the truck and her husband to Cedar Rapids on January 16 and took him home as planned. His first doctor's appointment was January 19, 2007.

Either the claimant or her husband checked back with the employer approximately weekly thereafter. The news from the doctor, whom Mr. Newburg was seeing approximately weekly, was not promising as far as his being able to return to work, and the claimant was still needed to

be available to transport him as he could not drive. The claimant then received a letter from the employer's insurance carrier dated February 12 indicating that the medical insurance was lapsing as they were not actively employed by the employer. The claimant took this to mean that she was discharged. However, she did not contact the employer to inquire as to her status.

On February 20 Mr. Newberg contacted the employer to report that he would not be able to return to his employment due to his medical condition. The dispatcher to whom he spoke assumed he was speaking also for the claimant; the claimant did not separately contact the employer to inquire about any possibility of her returning to work on her own or with another co-driver.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

Iowa Code § 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that it was the employer's action of discontinuing her medical insurance and its inaction of not offering her an opportunity to drive on her own or with another co-driver which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where the period of absence for a compelling personal reason exceeds ten days. 871 IAC 24.25(20). The fact that the claimant's medical insurance lapsed due to her inactive employment is a separate question from whether the employer was initiating a separation; the employer is not compelled to provide medical insurance for inactive employees, and the employer itself never informed the claimant that she no longer had an option to seek to return to her employment.

While it was a reasonable course of action, it was the claimant who made the decision in January to remove herself from active driving status; therefore, the separation is considered to be a voluntary quit. The claimant's original voluntary quit was for good cause under the statutory provisions for a compelling personal reason, particularly the need to provide care for her husband. However, the claimant must also demonstrate that she offered to return to work, but no work was available. It is her obligation to contact the employer and seek to return, not the employer's obligation to contact her to offer her the option to return. The claimant has not satisfied this burden. Benefits are denied until or unless the claimant satisfies this requirement of the statute and rule or has requalified.

DECISION:

The representative's March 23, 2007 decision (reference 01) is affirmed. The claimant voluntarily left her employment for a compelling reason to care for an ill family member, but has not yet offered to return to work. As of January 16, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, or until she has offered to return to work and no work was available, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs