

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEREK A LUKASIK**

Claimant

**APPEAL NO: 11A-UI-10297-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**

Employer

**OC: 06/05/11**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

CRST Van Expedited, Inc. (employer) appealed a representative's July 27, 2011 decision (reference 02) that concluded Derek A. Lukasik (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 August 24, 2011. The claimant participated in the hearing and presented testimony from one other witness, Timothy Ison. Sandy Matt appeared on the employer's behalf and presented testimony from one other witness, Lisa Seipel. 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 November 12, 2009. He worked full time as a lead driver and trainer in the employer's over-the-road trucking business. His last day of work was May 28, 2011.

On May 28 the claimant was late in making a delivery to a high priority client in Phoenix, Arizona. The claimant's former dispatcher had suggested to him that a driver who was late with a delivery to that client three times would be automatically discharged. The claimant had not had contact with that dispatcher for at least four months; his dispatcher since January 13, 2011, Ms. Seipel, had never made such a comment to him. The claimant believed he had been previously late in making a delivery to this client perhaps 15 or 16 times in the past, and perhaps seven times in the last five months, although the employer had no record of issues with late deliveries by the claimant to the client. The claimant concluded that he would be discharged. He assumed that the employer would direct that he be routed back to a location in

Laredo, Texas, to be told he was being discharged. He did not want to go to the location in Texas because of a confrontation he had had with persons at that location the prior year. Despite being advised not to leave by Mr. Ison, the student driver who was also in the truck, as a result of the conclusions he had drawn, the claimant went to a local truck stop, cleared out his personal belongings from the truck, and left the truck and obtained other transportation back to his home in New York.

The employer had made no decision to discharge the claimant. There was no automatic discharge policy in place for late deliveries to this client, and the claimant's job had not been in jeopardy prior to May 28. The employer has no administrative personal at the location in Laredo, Texas, which is only a drop yard; all of its administrative personal are in Cedar Rapids, Iowa, and if the claimant would have been diverted anywhere for disciplinary reasons, it would have been to Cedar Rapids. The claimant had previously brought into the Cedar Rapids office for a positive performance recognition. Ms. Seipel attempted to contact the claimant several times after being informed he had left the truck, but he never returned the calls to her. The employer subsequently concluded that he had quit by abandoning the truck and his employment.

The claimant established a claim for unemployment insurance benefits effective June 5, 2011. The claimant has received unemployment insurance benefits after the separation.

#### **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 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 claimant asserts that the separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s supposed automatic discharge policy 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 leaving when the employee believes he has been or will be discharged, but has not been told that in fact he has been discharged. 871 IAC 24.25.

The claimant left because of a belief he would be discharged. However, he had not been told that he in fact had been discharged, nor did he establish that there was any current or actively practiced policy of automatic discharge. Therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). The claimant has not provided sufficient evidence to conclude that it was intolerable or detrimental. His fear that he would be diverted to a location he wished to avoid

due to a potential conflict had no rational basis. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's July 27, 2011 decision (reference 02) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 28, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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