

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLOS REYES

Claimant

APPEAL NO. 09A-UI-10282-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 03/01/09

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 8, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 4, 2009. Claimant participated. Employer participated by Sandy Matt, human resources specialist. The record consists of the testimony of Carlos Reyes; the testimony of Margarita Reyes; and the testimony of Sandy Matt. Official notice was taken of the administrative file.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a transportation company and the claimant worked as an over-the-road truck driver. He was initially hired in 2007 and worked from July 12, 2007 through August 18, 2007. The claimant did not report his availability to the employer thereafter and he was considered a voluntary quit. The claimant was rehired on February 18, 2008. At some point following this re-hire, there was another period where the claimant did not report his availability. The employer has a policy that if a claimant does report within 30 days, that the claimant will be reinstated to the hire day, which in this case was February 18, 2008. The claimant finally did call and was within the 30-day limit. He was reinstated back to February 18, 2008. This type of reinstatement can occur only once.

On February 27, 2009, the claimant informed his dispatcher, who is his immediate supervisor, that he was quitting and would look for a job outside trucking. His reason for quitting was that he was not making enough money. His dispatcher, whose name is Bill McGuire, did not take the claimant out of the system until March 11, 2009, in the event that the claimant changed his mind. The claimant applied for unemployment benefits in California on March 1, 2009.

REASONING AND CONCLUSIONS OF LAW:

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(13) provides:

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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

One of the issues that had to be resolved in this case was whether the claimant's testimony that he did not voluntarily quit his job on February 27, 2009, was credible. The administrative law judge questioned the claimant and his wife extensively on this issue and their testimony on who they talked to and when was inconsistent. The claimant said that he thought he was terminated because he was "out of the system." He and his wife claimed that they could not figure out why he was out of the system and why the claimant was not getting work.

The crucial piece of evidence in this case is that the claimant filed for unemployment benefits in California on March 1, 2009. If he had called CRST and quit his job on February 27, 2009, filing a claim for unemployment benefits on March 1, 2009, was consistent with having quit a job on February 27, 2009. The claimant's testimony that he filed for unemployment benefits because he was "no longer in the system" cannot be true because CRST had the claimant in its system until March 11, 2009. The conclusion most consistent with the credible evidence in this case is that the claimant voluntarily quit his job on February 27, 2009.

Since the claimant voluntarily quit his job, the next issue is whether the claimant quit for good cause attributable to the employer. The only evidence on why the claimant quit his job is dissatisfaction with his wages. There does not appear to have been any change to the contract of hire concerning the claimant's wages. The claimant actually received an increase from

11 cents a mile to 16 cents a mile. Dissatisfaction with wages does not constitute good cause attributable to the employer since the claimant knew the rate of pay when hired.

The next issue is overpayment of benefits. Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for determination of an overpayment.

DECISION:

The decision of the representative dated July 8, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to the Claims Section for determination of an overpayment.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs