

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A DAUGHTRY
Claimant

APPEAL NO. 11A-UI-10953-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**OC: 07/03/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 12, 2011, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on August 27, 2010 because of a non-work-related illness or injury. After due notice, a telephone conference hearing was held on September 13, 2011. Claimant participated personally. The employer participated by Ms. Sandy Matt, Human Resource Specialist. Employer's Exhibits One through Six were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: John Daughtry was employed by CRST Van Expedited, Inc. beginning October 15, 2008. Mr. Daughtry worked as a full-time over-the-road tractor/trailer driver and was paid by the mile.

The claimant's last day of work for the company was August 27, 2010. At that time Mr. Daughtry needed to undergo a DOT physical because of a medical condition related to diabetes. Mr. Daughtry was placed on short-term disability on or about November 5, 2010. The claimant provided what he believed to be all the necessary medical documentation to show that he was DOT certified and fully released by his physician to return to work with CRST Van Expedited, Inc. That information was forwarded to the company. In late December 2010 the claimant was informed by his immediate supervisor the documentation was received and he was eligible to return to work. On or about January 7, 2011, CRST sent a company truck to pick up Mr. Daughtry and the claimant assisted in driving duties. Later it was determined that the claimant had not received the necessary medical documentation and clearances from a "company physician" and was ineligible to return to work. Numerous communications were exchanged between the parties, however, sufficient documentation was not obtained or provided from a "company physician" to allow Mr. Daughtry to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes no work was available to the claimant upon his release to return to work from a non-work-related injury.

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.

Iowa Code § 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

(6) Separation because of illness, injury or pregnancy.

b. Non-employment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery when recovery was certified by a licensed and practicing physician the claimant returned and offered to perform services to the employer but no suitable or comparable work was available. Recovery is defined as the ability of the claimant to perform all the duties of the previous employment.

The claimant returned to the employer to offer services after medical recovery evinces an intention to continue working, therefore, the separation was attributable to lack of work by the employer. Benefits are allowed.

DECISION:

The August 12, 2011, reference 01, decision is reversed. Claimant was laid off due to lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs