

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALTER E LEGER

Claimant

APPEAL NO. 11A-UI-09195-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 06/05/11

Claimant: Respondent (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated July 6, 2011, reference 01. The decision allowed benefits to the claimant, Walter Leger. After due notice was issued, a hearing was held by telephone conference call on August 5, 2011. The claimant participated on his own behalf. The employer participated by Human Resources Specialist Sandy Matt and Christine Smith observed the proceedings but did not offer testimony.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Walter Leger was employed by CRST from April 8, 2010 until May 25, 2011 as a full-time over-the-road truck driver. When he took his original physical certification in May 2010 he was diagnosed with sleep apnea. He was required to use a CPAC machine 70 percent of the time in order to maintain his certification.

When the claimant took his recertification physical in April 2011, the information on the machine showed he had only been using it 26 percent of the time. The employer was advised of this and informed the claimant he would have to take another sleep apnea test for the next 30 days and if he showed the appropriate usage then he would be recertified.

The claimant received information he had passed the test around May 5, 2011. The results were sent to the doctor's office where the recertification physical had been done in April 2011. The claimant contacted Fleet Manager Scott Nelson who said the doctor's office had faxed the results to him and he would forward them to the safety department.

Mr. Leger then waited for several more weeks to hear from the employer without making any attempt whatsoever to contact either the safety department or the fleet manager to find out what the situation was. The employer does not appear to have received any of the necessary documentation and, since the claimant had made no contact, considered him a voluntary quit as of May 25, 2011.

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.

The record does not establish the claimant voluntarily quit. What it does establish is a lot of confusion, lack of communication and the fact the claimant, the doctor and the fleet manage/safety department were removed from each other geographically. A combination of these factors resulted in the necessary information not being adequately conveyed from one party to the other. The fact the claimant did not make an effort to keep in contact with the employer after the test was complete was certainly ill-advised. But there is no evidence of an intent to quit or any overt act carrying out that intent as required by *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

DECISION:

The representative's decision of July 6, 2011, reference 01, is affirmed. Walter Leger is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css