

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD A BROWN**  
Claimant

**APPEAL NO. 11A-UI-07440-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST FLATBED REGIONAL INC**  
Employer

**OC: 04/24/11  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Leaving - Layoff

**STATEMENT OF THE CASE:**

Richard A. Brown (claimant) appealed a representative's May 26, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from CRST Flatbed Regional, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2011. The claimant participated in the hearing and was represented by Angelo Nicolosi, attorney at law. 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 March 18, 2010. As of about October 2010, he worked full-time as an over-the-road truck driver as part of a three-driver team on a dedicated route, so that the claimant was on a rotating schedule of being on the road for two weeks, then home for one week. His last day on the truck was January 8, 2011.

On January 8, as the truck was in Chicago, near the claimant's home, the co-driver who was then driving with the claimant told the claimant that he and the other co-driver did not wish to drive with the claimant any longer, that he was to get off the truck permanently, and contact the fleet manager. When the claimant contacted the fleet manager on January 10, the fleet manager confirmed that he would no longer be driving with that truck and team, but indicated that he was looking for another truck and team to which to assign the claimant.

Between January 10 and January 26, the claimant contacted the fleet manager several times a week to learn whether a truck had been found for him; each time the fleet manager indicated he had not yet found anything, but that he was still trying. On January 26 the claimant advised the fleet manager that in the interim he was going to work temporarily with a local trucking

company, but that he remained ready to return to the employer once another truck was arranged for him. The claimant checked back with the fleet manager about one more time approximately a week after January 26, but at that point the fleet manager indicated he still had not been able to arrange another truck for the claimant. Once the fleet manager learned that the claimant was going to accept work on a temporary basis with the local trucking company, he apparently determined that the claimant was quitting his employment with the employer and seemingly ceased any efforts to find another truck for the claimant with the employer. The employer never offered the claimant another position on another truck.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The employer asserted that the claimant was not discharged but that he voluntarily quit to take work with the local trucking company. However, the separation occurred on January 8 when the claimant was put off the truck, not on January 28, when the claimant indicated he was taking temporary employment pending a return to work with the employer; the claimant did not leave the truck because of any intention to quit the employment. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as another form of separation.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The separation on January 8 was attributable to a lack of work by the employer and was a layoff which might have been temporary until another truck could have been assigned, but from which the employer never recalled the claimant. The claimant is not required to remain unemployed during a period of layoff in order to avoid being considered to have voluntarily quit. Benefits are allowed.

**DECISION:**

The representative's May 26, 2011 decision (reference 01) is reversed. The claimant did not voluntarily quit; the employer laid off the claimant for lack of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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