

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD S CUTSHAW JR
Claimant

APPEAL NO. 09A-UI-03014-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**Original Claim: 01/25/09
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 20, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 13, 2009. The claimant and Debra Cutshaw participated. The employer participated by Sandy Matt.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for employer on June 30, 2008. The claimant was hired on August 17, 2007 as an over-the-road long-haul driver. He obtained his CDL and certification and was a team driver for CSRT Van Expedited Inc. He worked as a team driver until his assigned partner quit in April of 2008. The claimant applied for a transfer and was assigned to a separate division, the Premier Division, as a solo driver, and worked out a different terminal in Indiana. His employer closed the Premier division on June 30, 2008. The claimant was not given the option to transfer back to the team driving division. His employment with the employer terminated on June 30, 2008. The employer offered the claimant the ability to lease/purchase a truck and was an independent contractor after June 30, 2008. He was unable to obtain enough business from CRST and stopped his relationship with them as an independent truck driver in October 2008.

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(19) 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:

(19) The claimant left to enter self-employment.

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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). There is no evidence the claimant intended to terminate his employee/employer relationship. The claimant did not quit his employment to become an independent contractor. He became an independent contractor after he was terminated by the employer.

There is no evidence the claimant committed any job-related misconduct.

DECISION:

The decision of the representative dated February 20, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw