

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY P RICKER
Claimant

APPEAL NO. 11A-UI-05444-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 02/27/11
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 12, 2011, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 18, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Sandy Matt participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road truck driver from July 2, 2009, to July 23, 2010.

On June 3, 2010, the claimant injured her leg while working when she was moving from the sleeper to the passenger seat of her truck as she was working as a co-driver at the time. The claimant reported the injury to a supervisor.

The claimant continued to work in spite of the leg pain until July 23, 2010, when she was evaluated by a workers' compensation doctor. The doctor excused the claimant from working due to her injury because she was not able to operate a clutch with her injury. The claimant was on leave from the employer after July 23, 2010. She would send the papers from her doctor after the doctor's visit.

The claimant's doctor advised her that she needed knee surgery. The workers' compensation company denied liability on the claim because it determined the knee problem was a pre-existing condition separate from the injury to the leg. The claimant did not contest that determination, so the claimant paid for the surgery herself. She remained off work recuperating after the surgery. She informed the employer that it would be a couple of months before she could return to work.

As of the time of the hearing, the employer considered her as an employee on leave. The employer has not discharged the claimant and would consider having her return to work as a driver. The claimant has never offered to return to work since the surgery. The claimant was released to drive a truck again until April 2011. Instead of contacting the employer about returning to work, the claimant applied for truck driving jobs with other trucking companies so she could stay closer to home and because she had a complaint about deduction from her pay. Because she still has a problem with her knee that prevents her from climbing into a truck trailer, she has not been able to pass the trucking companies' physicals.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe that the claimant was told by the dispatcher that it was too late to return to work. If this was the case, she would not be still on the employee's records as driver.

Even though the claimant never informed the employer that she was quitting, since the claimant never offered to return to work after being on leave from the employer and applied for other jobs, the separation must be considered a voluntary leaving of employment.

The claimant said that she did not offer to return to work because she wanted to work closer to home and a complaint about deductions from her pay. I cannot conclude that these reasons provided good cause for the claimant not contacting the employer about returning to work. The claimant continued to keep in contact with the employer for over six months, despite the problem with her pay, so it's unlikely this was why the claimant did not contact the employer about returning to work. It is understandable that the claimant wanted to be close to home, but this would not provide good cause attributable to the employer for leaving employment.

I will next consider the law regarding health-related separations from employment.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b. The claimant asserts the knee problem was work-related, but there is no competent medical evidence on this. The claimant did not make any request for accommodation before leaving employment.

The unemployment insurance law provides that individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

While the claimant was off work due an injury based on a doctor's advice and notified the employer of her need to be absent, the reasons for leaving her employment were not really due to the injury and the claimant was never advised by a doctor to leave her employment with the employer. Finally, the claimant has never offered to return to work.

DECISION:

The unemployment insurance decision dated April 12, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css