

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH KIDD**  
Claimant

**APPEAL NO. 10A-UI-02903-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**Original Claim: 01/10/10  
Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

CRST Van Expedited, Inc. (employer) appealed an unemployment insurance decision dated February 16, 2010, reference 01, which held that Sarah Kidd (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2010. The claimant participated in the hearing. The employer participated through Sandy Matt, Human Resources. Employer's Exhibit One was admitted into evidence. 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:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time over-the-road truck driver on June 19, 2008 and was taken off work on August 17, 2008 due to a workers' compensation injury. Her treating physician, Patrick Ronan, M.D., released her to return to work on January 18, 2010. Dr. Ronan reported that the claimant could take an over-the-counter anti-inflammatory but has not recommended any additional prescription pain medication. No prescription pain medication has been provided by this physician to the claimant since September 2009. Dr. Ronan also confirmed the claimant could operate a CMV for 11 hours and could lift up to 75 pounds.

The employer said the claimant did not return to work as of January 26, 2010. The claimant said she tried to return to work but is currently taking narcotic pain medication so was not allowed to return. The claimant provided no medical documentation substantiating who prescribed the narcotics and/or why she needed to take them when her treating physician released her without pain medication.

The claimant filed a claim for unemployment insurance benefits effective January 10, 2010 and has received benefits after the separation from employment.

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

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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). The claimant demonstrated her intent to quit and acted to carry it out by failing to return to work after January 18, 2010 without the use of prescription pain medication, which disqualified her from driving. The claimant's treating physician released her to return to work as of January 18, 2010 without the need for prescription pain medication. The claimant did not provide any medical documentation demonstrating otherwise.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated February 16, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw