IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KEITH A HUDSON
1240 BURNBRIDGE RD
FOREST VA 24551

CRST INC
$^{C}/_{O}$ TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-12475-RT
OC: 10-24-04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Keith A. Hudson, filed a timely appeal from an unemployment insurance decision dated November 9, 2004 reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 15, 2004, with the claimant participating. Sabrina Marter, Fleet Manager, participated in the hearing for the employer, CRST, Inc. Sandy Matt, Human Resources Specialist, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time over-the-road truck driver from March 19, 2003 until he voluntarily quit on July 7, 2004. The claimant informed the employer of his quit by using the Qualcom in his truck, notifying his supervisor, Sabrina Marter, Fleet Manager. The claimant informed her that he was quitting immediately. In the morning of July 7, 2004 or in the evening of July 6, 2004, the claimant was involved in an accident in Lynchburg, Virginia, near where he lived. The operator of another vehicle hit the tire of the truck the claimant was operating. The accident was not the claimant's fault. He properly reported the accident to the employer's accident hotline and a safety manager. The claimant then quit on July 7, 2004. The claimant had been planning on quitting several times but had not done so because he was on the road. The claimant believed that things were not going well and took this opportunity to quit while he was close to home.

The claimant provided many reasons for his quit. When he was first hired he was placed on the 20-10 program involving three drivers. One of the reasons gave for his quit was that he was removed from this program. However, on January 6, 2004, the claimant became a co-driver, working with only another driver. The claimant approved this change and this removed him from the 20-10 program. The claimant also testified that he quit because he was called names, such as "coon," "tranny," and "you people." However, the claimant was called "coon" in May 2003 and did not quit at that time, and no one used that word thereafter to the claimant. The word "tranny" is used as a shortened version for transmission, although the claimant believed it was a shortened version for transvestite. The claimant complained to his former operations manager, Brian Kirchner, and indicated that he would quit over these matters, but Mr. Kirchner said he would talk to the individuals involved and the claimant did not quit. The claimant was then transferred and placed under the authority of Sabrina Marter, Fleet Manager, and the employer's witness. The claimant testified that he was tired of being on the road and having his truck break down and being left out on the road unnecessarily. However, the evidence establishes that whenever the claimant called in concerning a truck breakdown, that roadside assistance was sent out each time. The claimant then testified that on one occasion he had to wear the same clothes for ten days because he had to take a bus and could not take any of his clothes or other possessions with him. However, the claimant testified that he was allowed to take two items under the bus and one carry-on. The claimant also testified that his truck was not safe and made some complaints about that. The claimant's truck was repaired and, finally, the claimant was given a new truck on May 21, 2004. The claimant then testified that he quit because he did not like the co-driver he was using. However, in the six months that he was under Ms. Marter, the claimant had three different co-drivers, each at his request and at his choosing, and the claimant had no complaints about his third and last co-driver prior to his quit. He expressed concerns to Ms. Marter about some of these matters, but only in February 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(21) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.

The parties agreed, and the administrative law judge concludes, that the claimant left his employment voluntarily on July 7, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant offered a litany of reasons for quitting the employer but many of them were addressed by the employer. The claimant testified that his truck was not safe; but the evidence indicated that he was given a new truck on May 21, 2004, one and one-half months before his quit. The claimant testified that he did not like the co-driver he was assigned; but the evidence establishes that the claimant had three different co-drivers in six months, each of which was given to him at his request and of his choosing and, even the claimant conceded that he had no complaints about his third and last co-driver. The claimant also testified that he was tired of being on the road and having his truck break down and being left out on the road unnecessarily. However, the evidence establishes that roadside assistance was sent out to the claimant on each occasion. It may well be that there was a delay in getting roadside assistance to the claimant, but the administrative law judge would imagine that this is just one of the matters one has to deal with as an over-the-road truck driver. There is no evidence that the claimant was singled out specifically as not being allowed roadside assistance. The claimant testified that he was once required to wear the same clothes for ten days because he could not take anything with him on the bus, but even the claimant stated that the bus allowed two items under the bus and one carry-on. The administrative law judge believes that the claimant could have taken at least some of his clothes under this allowance and perhaps other of his possessions. Finally, the claimant testified that he quit because he was called names, including “coon,” “tranny,” and “you people.” However, even the claimant testified that he was called “coon” only in May 2003 and that he complained to his then operations manager and the operations manager talked to the person involved. The claimant testified that he was not called that word thereafter. The administrative law judge certainly does condone any such word being addressed to the claimant, but believes that the words came over a year before the claimant quit and was not the motivating factor for the claimant's quit. Further, it appears that the employer addressed the claimant's concerns because that word was no longer used to the claimant. Finally, the word “tranny” is a shortened version for transmission. The administrative law judge is familiar with that term. The claimant testified that

he believed it was short for transvestite. The administrative law judge is not familiar with that and believes that there may have been some misunderstanding on the part of the claimant. In any event, there is no evidence that the claimant was called this immediately before his quit or that this word prompted his quit. The claimant also alleged that he was called “you people,” referring to his race, which is black. The administrative law judge is not convinced that these words were particularly used because of the claimant's race but rather, because the claimant was a truck driver. In any event, there is no evidence that the claimant quit when he did for these words. Finally, the claimant complained to his former operations manager, but this was prior to January 2004, and then he expressed concerns to his new fleet manager, Sabrina Marter, and the employer’s witness, but only in February 2004, which was almost five months before his quit. The claimant did not specifically give the employer any reasonable opportunity to address any specific concerns about the reason for his quit prior to his quit. In fact, the administrative law judge concludes that the claimant had no specific concerns linked directly in time to his quit on July 7, 2004.

At the time of his quit and the months immediately preceding his quit, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental, or that he was subjected to a substantial change in his contract of hire. As noted above, the employer addressed many of the claimant's complaints, such as the condition of his truck and the co-drivers, and that other complaints were so remote in time as to not be a valid reason for his quit on July 7, 2004. It appears to the administrative law judge that the claimant became frustrated with his job and quit because of a dissatisfaction with the work environment, but this is not good cause attributable to the employer. Finally, as noted above, the claimant never gave the employer a reasonable opportunity to address any concerns immediately prior to his quit. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated November 9, 2004, reference 01, is affirmed. The claimant, Keith A. Hudson, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

b/tjc