

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VEL N MCCULLOUGH
Claimant

APPEAL 16A-UI-13318-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**OC: 11/13/16
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the December 5, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2017. The claimant did not register a phone number with the Appeals Bureau and did not participate. The employer participated through Kim Bateman, human resources specialist. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

The administrative law judge would note that the issues of overpayment and relief of charges for the employer for participation in a fact-finding interview were excluded from the notice of hearing. Because both parties were not present for the hearing, there was no opportunity to potentially waive notice on those issues.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an over-the-road driver and was separated from employment on June 15, 2016. Continuing work was available.

The employer stated the claimant last performed work on April 19, 2016. There was no record of the claimant taking an approved leave of absence or time off, or attempting to return to work after a period of time. There was no evidence presented that the claimant was told he was discharged by the employer and not to return to work. Rather, the employer records asserted that the employer by way of Alex Ruud, attempted to contact the claimant for work but could not reach him, and that his phone was not in service. The claimant did not attend the hearing to rebut the employer's testimony and did not submit a written statement in lieu of participation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa 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. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

The credible evidence presented does not support the claimant was discharged or that continuing work was not available. Rather, the claimant last performed work on April 19, 2016, and the employer attempted to contact him at a known phone number and could not reach him. Consequently, he was determined to have abandoned his job, effective the employer's records, on June 15, 2016. The claimant did not attend the hearing to refute the employer's evidence regarding his separation. Accordingly, the administrative law judge concludes that the leaving the employment without notice or reason renders the separation without good cause attributable to the employer. Benefits are denied.

REMAND: Because the claimant is not eligible for benefits, he may have been paid benefits to which he was not entitled. Further, the employer may be relieved of charges, and the claimant may have to repay any overpayment of benefits if the employer participated in the fact-finding interview. These issues shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The December 5, 2016, (reference 01) decision is reversed. The claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND: The issues of overpayment (Iowa Code § 96.3(7)) and relief of charges for the employer/participation in the fact-finding interview (Iowa Admin. Code r. 871-24.10) are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs