

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN G SMITH
Claimant

APPEAL NO. 12O-UI-06709-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 01/22/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. filed a timely appeal from an unemployment insurance decision dated March 12, 2012, reference 01, that allowed benefits to Alan G. Smith. Notice was issued for a telephone hearing to be held April 4, 2012. The employer did not respond to the notice. Administrative law judge decision 12A-UI-02769-NT affirmed the allowance of benefits. The employer filed an appeal with the Employment Appeal Board which, in a remand order dated June 7, 2012, returned the case to the Appeals Bureau for further proceedings. After due notice was issued, a telephone hearing was held July 3, 2012. Mr. Smith participated on his own behalf. Human Resources Specialist Sandy Matt participated for the employer.

ISSUE:

Was the separation a quit or a discharge? Was the separation a disqualifying event?

FINDINGS OF FACT:

Alan G. Smith worked as an over-the-road truck driver for CRST Van Expedited, Inc. from November 11, 2010 until August 30, 2011. He was instructed by his driver manager to return the truck to a company facility in Atlanta, Georgia. Mr. Smith had taken a few weeks of “home time” earlier in August while he pursued a local driving position with another company. He could not pass the physical because of high blood pressure and returned to CRST until August 30.

REASONING AND CONCLUSIONS OF LAW:

The parties disagree as to the type of separation. The employer believes that Mr. Smith voluntarily resigned to accept other employment while Mr. Smith believes that he was discharged after returning from an unsuccessful attempt to obtain other employment. The time line in the evidence favors the claimant’s scenario. Ms. Matt testified that there were several weeks in early August during which Mr. Smith was not paid because he apparently was not in the truck. This corresponds with his recollection of the time that he spent applying for work with Conway.

Both parties are at somewhat of a disadvantage because Mr. Smith's driver manager is no longer with the company. Ms. Matt has no personal knowledge of the events. Company records do not reflect a discharge.

In order to characterize the separation as a voluntary quit, the evidence must show the intent to sever the employment relationship and an overt act carrying out that intent. That evidence is lacking. The most likely scenario is that Mr. Smith contemplated leaving the company and attempted to do so before failing the physical with the potential new employer. Whether he was discharged because of the log book violation of which he testified or because the employer learned of the results of the physical, it appears the separation was initiated by the employer.

Disqualification following discharge is appropriate if, and only if, a preponderance of the evidence establishes that the discharge occurred because of misconduct in connection with the employment. The administrative law judge concludes that the evidence does not establish such a finding. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 12, 2012, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs