

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

LUIS CRUZ
Claimant

APPEAL NO: 09A-UI-19460-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 11/22/09
Claimant: Respondent (2/R)

Section 96.5-1- Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a representative's December 16, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. A telephone hearing was held on February 9, 2010. The claimant participated in the hearing. Sandy Matt, a human resource specialist, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 13, 2008. The claimant understood that the employer would pay for his training if he worked a minimum of eight months for the employer. The claimant worked full time driving a tractor-trailer. The claimant worked with another driver.

The last trip the claimant took with a co-driver to the West coast took a lot longer than the claimant expected. The claimant and his co-driver had to drive in adverse weather conditions, which caused them to take some unanticipated layovers. At one layover, the co-worker had some drinks at a bar. The claimant did not believe his co-worker should drink while he was on the clock when they had to stop because of the weather. The claimant notified the employer about the situation. The person on duty that night indicated the employer could not do anything unless a third person contacted the employer. The claimant did not think this response was safe and showed a total disregard of the claimant's safety. The claimant was concerned that his co-driver would drink while he was driving and the claimant was sleeping.

After the claimant and his co-driver finished the delivery, they went home. The last day the claimant worked for the employer was January 14, 2009. The claimant did not return to work.

He did not return to work because he did not want to work with a co-driver, but the employer only had drivers work in pairs. The claimant also wanted to work for another trucking company. Although his co-driver and fleet manager called the claimant several times to find out if he was returning to work or why he was not returning to work, the claimant did not respond to these calls or message. The claimant did not inform anyone in management why he was not returning to work.

A few weeks later, the claimant contacted the employer to see if the employer would allow him to return to work as a driver. The employer told him he would not be rehired or reinstated. The claimant learned other trucking companies wanted more experienced drivers.

The claimant established a claim for benefits during the week of November 22, 2009. The claimant filed for and received benefits since November 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The claimant quit his employment when he did not return to work as scheduled after January 14, 2009. The claimant acknowledged he quit. The claimant quit because he did not like the response he received when he reported concerns about his co-driver's drinking. The claimant did not see his co-driver drinking before he drove when the claimant was awake, but the claimant was concerned about what his co-driver did when the claimant was sleeping. The claimant's concerns were genuine, but he did not establish that his co-driver actually put the claimant's job in jeopardy. If the claimant did not like his co-driver on the last trip, he could have asked for another partner, but did not. Since his co-driver called the claimant to find out why he had not returned to work, it is doubtful that his partner even realized the claimant had any safety concerns. The claimant asked the employer if he could return a few weeks later after he realized other trucking companies wanted drivers with more experience. A preponderance of the evidence establishes he quit for personal reasons. These reasons do not qualify him to receive benefits.

As of November 22, 2009, the claimant is not qualified to receive benefits. Since the claimant has filed for and received benefits since November 22, the issue of overpayment or whether he is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's December 16, 2009 decision (reference 01) is reversed. The claimant voluntarily quit his employment for personal reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of November 22, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will

not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css