

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK C CLARK
Claimant

APPEAL NO. 09A-UI-02770-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**Original Claim: 01/11/09
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. filed a timely appeal from an unemployment insurance decision dated February 13, 2009, reference 01, that allowed benefits to Jack C. Clark. After due notice was issued, a telephone hearing was held March 12, 2009, with Human Resources Specialist Sandy Matt participating for the employer. Mr. Clark did not provide a telephone number at which he could be contacted. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jack C. Clark was employed as an over-the-road driver by CRST Van Expedited, Inc., from June 13, 2008, until he resigned November 19, 2008. Mr. Clark told his dispatcher that he had obtained custody of his child and could no longer be out on the road. Further work was available had he not resigned. Mr. Clark has received unemployment insurance benefits since filing a claim effective January 11, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does not.

An individual who resigns because of lack of child care does so without good cause attributable to the employer. See 871 IAC 24.25(17). The evidence in this record establishes that Mr. Clark left employer under circumstances contemplated by this rule. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Clark must repay benefits already received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated February 13, 2009, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of whether he must repay unemployment insurance benefits already received is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw