

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L BRAKE

Claimant

APPEAL NO. 12A-UI-10120-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 07/08/12

Claimant: Appellant (4)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Michele Brake filed a timely appeal from the August 14, 2012, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on September 14, 2012. Ms. Brake did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Sandy Matt represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether Ms. Brake voluntarily quit the employment with CRST for the sole purpose of accepting other employment with owner-operator John Biekert and performed work for Mr. Biekert.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michelle Brake was employed by CRST Van Expedited, Inc., as a full-time over-the-road truck driver from January 2011 until December 16, 2011, when she voluntarily quit the employment to accept employment with owner-operator John Biekert. Mr. Biekert was an owner-operator contracted to haul for CRST. Ms. Brake performed work for Mr. Biekert. At the time Ms. Brake separated from CRST, CRST continued to have work for her.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Administrative Code section 871 IAC 23.19(6) provides as follows:

Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor.

Iowa Administrative Code section 871 IAC 22.3(5)(c)(3) provides as follows:

If an individual is a truck driver leased from a company that leases truck tractors with drivers to trucking companies, the individual shall be considered to be the employee of the leasing company unless and until it is shown to the satisfaction of the department that the trucking company has the exclusive right to hire, fire, discipline, reassign, and direct and control the services performed by the individual, both under a written contract and in fact.

The weight of the evidence in the record establishes that Ms. Brake voluntarily quit her employment with CRST for the sole purpose of accepting new employment with John Biekert and performed work for the new employer. The quit was without good cause attributable to CRST. CRST will not be charged for benefits paid to the claimant. The separation from CRST did not disqualify Ms. Brake for unemployment insurance benefits. Ms. Brake is eligible for benefits, provided she is otherwise eligible.

DECISION:

The agency representative's August 14, 2012, reference 02, decision is modified as follows: The claimant voluntarily quit her employment with CRST for the sole purpose of accepting new employment with John Biekert and performed work for the new employer. The quit was without good cause attributable to CRST. CRST will not be charged for benefits paid to the claimant. The separation from CRST did not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw