

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER VAUGHN
Claimant

APPEAL NO: 09A-UI-11567-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 06-07-09
Claimant: Appellant (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 7, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 26, 2009. The claimant participated in the hearing. Sandy Mott, Human Resources Specialist and Tony Bivens, Fleet Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his 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 as a full-time over-the-road truck driver for CRST Van Expedited from July 17, 2008 to April 30, 2009. On April 28, 2009, the employer left a message for the claimant that it had a co-driver lined up to pick him up in Atlanta but the claimant did not respond to the message. The co-driver arrived in Atlanta on April 28, 2009, and when the claimant had not arrived or called by 8:30 a.m., April 29, 2009, the employer called him again and stated the co-driver had to leave without him because he failed to answer or return their phone calls. The employer did not hear from the claimant April 28, 29 or 30, 2009. The claimant's previous co-driver quit a few weeks earlier and the claimant wanted to hold out in hopes he would return. He was also upset because he believed he was going to get a new truck in Oklahoma City but did not and had been "complaining of a lack of miles" prior to that. He testified he did not want to "work with (the employer) anymore." He did not communicate with the employer to tell him he was trying to bring his previous co-driver back or that he was going to quit if his other concerns were not addressed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant was upset about losing his co-driver and not getting a new truck or enough driving hours, he quit by failing to respond to the employer's phone call about a load scheduled for him out of Atlanta. He was a no-call/no-show for three consecutive workdays in violation of the employer's policy. Although the claimant was dissatisfied with his job, he has not demonstrated that his leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 7, 2009, reference 01, decision is reversed. The claimant voluntarily left his 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. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css