IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER L GREENE
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO: 12A-UI-01731-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/08/12
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (employer) appealed a representative's February 9, 2012 decision (reference 02) that concluded Jennifer L. Greene (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2012. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf and presented testimony from one witness, Therese Strellner. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on August 27, 2010. She worked full time as an over-the-road truck driver. Since about January 2011 she and her husband worked as team drivers on a dedicated route running from Sunday through Friday on a route between Washington, West Virginia and Newark, Delaware. Her last day of work was December 29, 2011.

The truck the claimant was driving went into the shop for repairs on December 30, 2011; it was not finished until January 5, 2012, so the claimant could not work during that period. When the employer contacted the claimant about work for January 6, she indicated she could not work because her husband's aunt had passed away and they would be attending the funeral. While

the employer had some question about this and asked for documentation of the family member's funeral, the employer then set the claimant up to pick up a load on January 8, 2012. However, on January 9 the employer learned that the claimant had not picked up the load. After some communication between the claimant and the employer on the morning of January 9, the claimant sent the employer an email stating in part, "Just curious as to where you would like us to take the truck. We are done being cursed at and told that we did something to the truck." (Employer's Exhibit One.) The employer understood from this communication that the claimant was quitting the employment; the employer arranged to pick up the truck on January 13.

The claimant's reference to being told they had done something to the truck most recently goes back to service done on the truck by a dealer on about December 22. The dealer indicated to the employer that the employer would need to pay on the work because, according to the dealer, "unit was ran without DEF fluid." The employer informed the claimant of this report on or about December 23. The claimant, or her husband, responded that the dealer was "full of sh@#," and "that is BS," that they got DEF every week, and they "will not be blamed for this." (Employer's Exhibit Two.) The claimant testified that she had quit because she was being tired of being accused of sabotaging the truck and the employer not believing their explanations for damage to the truck and for the asserted need to take time off for, e.g., a family member's funeral. The truck the claimant drove was subject to frequent breakdown; however, because of this, in April 2011 the employer had sought to switch out the truck, which the claimant declined. The reference in the claimant's January 9 email to "being cursed at" was in reference to the reaction of the night dispatch person after being told that the truck had to go back to the shop, saying, "J - - - - F - - - ing C - - - -." She was also upset that the employer did not accept the claimant's word that they could not take a trip on January 6 because of the death of a family member.

The claimant established a claim for unemployment insurance benefits effective January 8, 2012. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker or supervisor is not good cause. 871 IAC 24.25(6),(21),(22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant can hardly complain of the vulgar language of the night dispatcher when she is responsible for similar language. The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d

660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, her complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied her burden. Benefits are denied as of the benefit week starting January 8, 2012.

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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's February 9, 2012 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of the benefit week starting January 8, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs