

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GILBERTO MARTINEZ
Claimant

APPEAL NO: 12A-UI-05333-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 04-01-12
Claimant: Appellant (1)

Iowa Code Section 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 31, 2012. The claimant participated in the hearing. Sandy Matt, Human Resources Specialist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his position due to a non-work-related injury or illness.

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 June 9, 2011 to December 6, 2011. The claimant was required to have a medical certification card before he could drive. He had a six-month medical certification card at the time of hire. Part of the procedure for securing the medical certification involved a sleep study. The claimant was required to undergo the sleep study test before his six-month medical certificate expired or he would not be allowed to drive per federal DOT regulations. The claimant did not participate in the sleep study prior to December 6, 2011, and was therefore unable to drive pursuant to the DOT rules because he no longer had a valid medical certification card. He did complete the sleep study in February 2012 but failed and retook the test with a C-Pap machine April 24, 2012, and received a valid medical certification card. He is now going through orientation for the employer and will start driving again in a few days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is temporarily separated from his employment without good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant failed to update his medical certification card within the six-month time frame allowed and consequently the employer could not permit him to drive, per DOT regulations, until he obtained said certification. The claimant was not able and available to perform his job between December 6, 2011, and the date he secured his new medical certification card. Accordingly, the temporary separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The May 4, 2012, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs