

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

STEVEN M DIAZ  
1947 WASHINGTON AVE SE  
CEDAR RAPIDS IA 52403-4409

CRST INC  
C/O TALX EMPLOYER SERVICES  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-07049-DWT  
OC: 06/11/06 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leave for Medical Reasons and Offer to Return after Recovery

STATEMENT OF THE CASE:

Steven M. Diaz (claimant) appealed a representative's July 3, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of CRST, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Sandy Matt, the human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 6, 2004. The claimant worked as a full-time over-the-road driver. The claimant had a work-related injury and was off work for a period of time. The claimant contacted the employer on April 6, 2006, after he recovered from his work-related injury. The employer wanted to assign the claimant work, but the claimant was unable to drive in early April because he had high blood pressure and could not get his blood pressure under control. The employer asked the claimant to contact the employer again after his blood pressure was under control.

The claimant again contacted the employer in late May about returning to work. The claimant had gotten his blood pressure under control. The dispatcher told the claimant that as soon as the employer found a driver to work with the claimant, the employer would contact the claimant. The claimant gave the dispatcher his phone number.

Within a short time, the employer found someone to drive with the claimant and called the phone number the claimant gave the dispatcher. The dispatcher was unable to contact the claimant and the claimant did not again contact the employer. The claimant established a claim for unemployment insurance benefits during the week of June 11, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When a claimant leaves employment because of an illness or injury upon the advice of a doctor and the employer consents to the absence, the claimant is not disqualified from receiving benefits when the employer does not have work available when the claimant offers to return to work after he has recovered from his illness or injury. Iowa Code § 96.5-1-d. The facts establish that in April when the claimant had recovered from his work-related injury, he could not return to work because of high blood pressure. After the claimant recovered or got blood pressure under control, he then contacted the employer in late May. The employer planned to put the claimant back to work as soon as the employer found another person to team up with the claimant.

The dispatcher(s) who attempted to contact the claimant after finding a co-driver did not testify at the hearing. The employer's witness did not know how many times the dispatcher attempted to contact the claimant or even when the claimant was contacted. As a result, the evidence indicates the employer did not have any work available for the claimant when he initially contacted the employer in late May. The evidence does not establish when the employer had work available for the claimant to do as a team driver. As a result of the facts presented during the hearing, the claimant's employment separation does not disqualify him from receiving unemployment insurance benefits.

DECISION:

The representative's July 3, 2006 decision (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits because after the claimant recovered from a medical condition he offered to return to work in late May but the employer did not have any available work for him at that time. As of June 11, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. Even though the claimant has not filed any weekly claims as of July 27, 2006, the employer's account could be held subject to charge if the claimant receives any benefits.

dlw/kjw