

**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**

**GREGORY L RICHARDS
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**CRST INC
TALX UCM SERVICES INC
PO BOX 1160
COLUMBUS OH 43216 1160**

**Appeal Number: 04A-UI-11479-H2T
OC: 08-22-04 R: 12
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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 October 18, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 17, 2004. The claimant did participate. The employer did participate through Sandy Matt, Human Resources Specialist.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an over-the-road driver full time beginning June 3, 2003 through August 23, 2004 when the claimant voluntarily quit his job by failing to return to work after his

doctor released him to return to work without restrictions on August 23, 2004. The claimant was injured in a work related accident on November 4, 2003. He continued to work until January 15, 2004. From January 15, 2004 through August 23, 2004 the claimant was off work receiving physical therapy once per week. At the time of the hearing the claimant had no permanent work restrictions and no physician had told him that he is unable to work as a result of the accident. The claimant lost his commercial drivers license in September 2004 because he failed to pay child support. On August 23, 2004 his physician released the claimant to return to work full duty without restrictions. The claimant failed to report back to the employer that he was ready to return to work and failed to return to offer his services to his employer after his recovery. On October 18, 2004 the claimant's physician placed him at maximum medical improvement and again reiterated that the claimant was released to return to work without restrictions.

On January 24, 2004 the claimant refused to return to modified duty work although the employer would have provided lodging and paid for the claimant's transportation as well as allowed him to go home every three weeks at their expense. The claimant refused suitable work accommodations.

The claimant has received unemployment insurance benefits after the separation beginning the week ending August 28, 2004.

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-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.

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 (amended 1998).

The claimant was released to return to work by his physician without any work restrictions on August 23, 2004. The claimant failed to return to the employer and offer his services once he was released to return to work.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v.

Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's failure to return to work and offer his services once his physician had cleared him to do so evidences his intention to quit working for this employer. The claimant's quitting was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 18, 2004, reference 02, 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. The claimant is overpaid benefits in the amount of \$3,168.00.

tkh/tjc