IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

EDWARD J HARWOOD
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO. 14A-UI-00100-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/08/13
Claimant: Appellant (5)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Edward Harwood filed a timely appeal from the December 31, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2014. Mr. Harwood participated. Sandy Matt represented the employer. Exhibits A through E were received into evidence.

ISSUE:

Whether Mr. Harwood separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Edward Harwood was employed by CRST Van Expedited as a full-time over-the-road truck driver from July 2012 until December 16, 2012, when he voluntarily quit. Mr. Harwood's immediate supervisor was Dillon Maki, Fleet Manager. On December 16, 2012, Mr. Harwood was scheduled to start a period of approved time off. However, at that time, Mr. Harwood told Mr. Maki that he was leaving the employment indefinitely while he considered whether he should undergo surgery for a non-work-related matter. Mr. Harwood's decision to separate from the employment indefinitely was not based on advice from a doctor. Mr. Harwood did not return to the employment. Mr. Harwood elected not to undergo the surgery. Mr. Harwood elected not to return to work at all and elected instead to assist his spouse with such chores as walking the dog. At the time Mr. Harwood voluntarily separated from the employment, the employer was getting ready to discharge him from the employment in connection with accidents that that the employer deemed preventable. However, the employer never communicated the discharge to Mr. Harwood. On January 23, 2013, the employer sent Mr. Harwood a form recruiting letter inviting him to return to the employment. Mr. Harwood did not respond to the letter.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Harwood voluntarily quit the employment due to a non-work related medical issue. The voluntary quit was effective December 16, 2012. The evidence fails to establish that it was necessary for Mr. Harwood to separate from the employment in light of the purported medical condition. The quit was not upon the advice of a licensed and practicing physician. Mr. Harwood did not return to the employer to offer his services after recovering from the medical condition that he indicates prompted him to leave. Mr. Harwood's voluntary quit was for personal reasons and without good cause attributable to the employer. Accordingly, Mr. Harwood is disqualified for benefits until 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 employer's account shall not be charged for benefits.

The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that Mr. Harwood's separation was based on a discharge, rather than a voluntary quit. Though the employer may have had concerns about preventable accidents, the evidence fails to establish that the employer ever communicated a discharge to Mr. Harwood.

DECISION:

The Agency representatives December 31, 2013, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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