

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES L FLUKER
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL 15A-UI-08612-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 23, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 21, 2015. Claimant did participate. The Employer participated through Kim Bateman, Human Resources Specialist.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as over the road driver beginning on June 25, 2014 through June 10, 2015 when he voluntarily quit.

The claimant's father had a stroke on May 9. The claimant notified the employer immediately that he would need time off. His father passed away on May 14 and the funeral was held on May 23, 2015. The claimant did not return to work after the funeral or offer to return to work. On June 10 the claimant called the human resources department and spoke to Angela Durkee. Ms. Durkee told him he was not eligible for leave under the Family Medical Leave Act, (FMLA) because he had not been employed at least one year. The claimant never returned to work. He was away because he wanted time off to deal with his grief due to the death of his father. The claimant was off work from May 9 until June 10 when his request for FMLA was denied as he did not qualify. The employer was under no obligation to provide the claimant with a paid leave and they had already provided him with a month off work. If the claimant had returned to work on or around June 11, continued work was available for him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5(1) 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.

Iowa Admin. Code r. 871-24.25(20) and (23) provide:

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 § 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 § 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 was not eligible for FMLA. The employer had already given him a month off work. The employer chose not to grant him any additional time off work. Under these circumstances the claimant's leaving is properly classified as a voluntary quit. He did not return to work after his leave expired. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The July 23, 2015, (reference 01) decision is affirmed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css