

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHONNAIL D GREENE

Claimant

APPEAL NO. 10A-UI-03445-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 08/02/09

Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, CRST, filed an appeal from a decision dated February 25, 2010, reference 01. The decision allowed benefits to the claimant, Shonnail Greene. After due notice was issued, a hearing was held by telephone conference call on April 21, 2010. The claimant participated on her own behalf. The employer participated by Human Resources Specialist Sandy Matt.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Shonnail Greene was employed by CRST from September 21, 2007 until January 26, 2009 as a full-time over-the-road truck driver. She drove with a co-driver and earned 1.5 days for every week they were on the road.

Her last day of driving was January 9, 2009, and she was to have five days off. Drivers are obliged to contact the fleet manager when they are to return to work to obtain the information about the next dispatch. On the day she was to return to work Ms. Greene contacted Fleet Manager Charm White and said she needed a few extra days as her sister was having surgery on January 17, 2009. This was granted but then the claimant did not keep in touch with Ms. White. The co-driver was in possession of the truck but he could not be contacted, either by Ms. Greene or the employer. The employer had the truck towed on January 26, 2009, and considered both drivers to be voluntary quits for failure to return to work.

Shonnail Greene has received unemployment benefits since filing a claim with an effective date of August 2, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was to return to work on January 15, 2009, but was granted permission for a few extra days for family medical issues. She did not contact the employer again for over 11 days, by which time the truck had been out of service for over two weeks. Ms. Greene had the option of contacting her fleet manager and requesting a list of other potential co-drivers so she could continue to work but did not do so until after her truck had been towed.

The record establishes the claimant is considered a voluntary quit for being no-call/no-show to work in excess of three days. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 25, 2010, reference 01, is reversed. Shonnail Greene is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css