

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R RUSINKO
Claimant

APPEAL NO. 12A-UI-08054-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 06/03/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 28, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 25, 2012. Claimant Michael Rusinko did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Sandy Matt, human resources specialist, represented the employer.

ISSUE:

Whether Mr. Rusinko 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: Michael Rusinko was employed by CRST Van Expedited, Inc., as a full-time, permanent, over-the-road truck driver from March 2011 until November 7, 2011, when he voluntarily quit. Mr. Rusinko was not a temporary employee. Mr. Rusinko participated in a truck driver training program paid for by the employer. If Mr. Rusinko stayed with the company eight months, Mr. Rusinko was not required to reimburse the employer for the cost of the driver training. Completion of the training program did not mean that the employment was at an end and the employer continued to have work available for Mr. Rusinko at the time he voluntarily quit. When Mr. Rusinko quit, he made reference to a need to care for his father. No further information is available on that issue.

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.

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. Rusinko voluntarily quit for personal reasons and not for good cause attributable to the employer. Mr. Rusinko has failed to present any evidence to establish that his voluntarily separation from the employment fell under an exemption to the disqualification normally associated with a voluntary quit without good cause attributable to the employer. Mr. Rusinko 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 paid to Mr. Rusinko.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's June 28, 2012, reference 01, decision is reversed. 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.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw