

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD GREENE
Claimant

APPEAL NO: 12A-UI-01772-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 01/08/12
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (employer) appealed an unemployment insurance decision dated February 9, 2012, reference 01, which held that Richard Greene (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2012. The claimant participated in the hearing. The employer participated through Sandy Matt, Human Resources Specialist and Therese Strellner, Fleet Manager. Employer's Exhibits One and Two was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from August 27, 2010 through January 9, 2012 when he voluntarily quit his employment. Jennifer Greene was his co-driver and they had a dedicated run each week hauling DuPont products from West Virginia to Newark, New Jersey. The last day of work was December 29, 2011 after which their truck had to go into the shop for repairs.

The repair was completed on January 5, 2012 and Fleet Manager Therese Strellner called Jennifer Greene on that day to tell them she had freight for them to haul. Jennifer said that they could not work because the claimant's aunt had passed away and the funeral was on January 6, 2012. Ms. Strellner said she needed documentation and advised the employees to call her on the following day. Neither Jennifer nor the claimant called Ms. Strellner on January 6, 2012 so Ms. Strellner called each of their cell phones and left a voicemail that she had a load to be picked up on January 8, 2012 to be delivered on January 9, 2012.

The load was not picked up and the employer did not hear from the claimant or his co-driver. Ms. Strellner called the claimant at 8:00 a.m. Eastern Standard Time but had to leave a voicemail. She received an email from Jennifer Greene at 10:46 a.m. that morning which stated, "Just curious as to where you would like us to take the truck. We are done being cursed at and told that we did something to the truck. As far as not working last night we didn't know about a load because we didn't have access to the truck all weekend. You knew we had a death in the family and you acted like you did not care at all." The truck had been previously repaired and the employer was told they would have to pay for the charges because the claimant had not ensured they had diesel exhaust fluid (DEF) in the DEF tank. The claimant disputes this and claimed he had kept sufficient DEF in the tank.

Based on the claimant's email and the fact that he had not reported to work the day before, Ms. Strellner interpreted the email to mean that the claimant was quitting his employment. She responded to the claimant in an email sent at 11:54 a.m. which stated, "I called you on Friday and left you a voice mail. I told you Thursday to call Friday and you didn't. Leave the truck at the dealer and I will hire other drivers for it and will get you termed out of the system." The claimant did not contact the employer after that with any questions or any indication that he wanted to continue working.

The claimant filed a claim for unemployment insurance benefits effective January 8, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit by not reporting to work to pick up the load on January 8, 2012. He carried out that intent by having his co-driver send the employer an email which asked where they were to take the truck and said they were done being cursed at and told they did something to the truck.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984). Neither the fleet manager nor the employer told the claimant he was fired or discharged.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden. Benefits are denied.

Iowa Code § 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 § 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 could 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 unemployment insurance decision dated February 9, 2012, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs