

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TONY L GOODALL**  
Claimant

**APPEAL NO. 10A-UI-15290-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST FLATBED REGIONAL INC**  
Employer

**OC: 09/26/10**  
**Claimant: Respondent (2R)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

CRST Flatbed Regional Inc. filed a timely appeal from a representative's decision dated October 26, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing held on December 16, 2010. The claimant participated personally. The employer participated by Mr. Jerry Artress, Director or Dedicated Services.

**ISSUE:**

At issue is whether the claimant quit employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Tony Goodall was employed by the captioned truck line beginning November 28, 2007. The claimant's last day of work was September 8, 2010. Mr. Goodall worked as a full-time over-the-road tanker truck driver on a dedicated route. The claimant was paid by the mile. His immediate supervisor was his dispatcher.

Mr. Goodall left his employment with CRST Flatbed in anticipation that he would be discharged by the company. After returning from his last run on September 8, Mr. Goodall refused dispatches on September 10 and 11 due to personal illness. The company, through Mr. Goodall's dispatcher, had initially requested that the claimant provide a doctor's excuse. When Mr. Goodall refused because other drivers had not been required to submit a doctor's excuse, the claimant's dispatcher stated the company was "thinking of firing you." The following day the dispatcher recanted the threat to terminate the claimant and Mr. Goodall was told that he would be called for dispatch.

During this time it came to the attention of the company that approximately 60 pages of daily logs previously submitted by Mr. Goodall had not been received electronically by the company. Because of the missing logs, an order to "stop dispatch" was entered into the company's computer system pending the company's receipt of the original copies of the claimant's logs.

Mr. Goodall sent his paper logs to the company's headquarters in Birmingham, Alabama by private mail service and they were subsequently returned to Mr. Goodall as undeliverable.

On Monday, September 20, 2010, Mr. Goodall spoke with the company's records/log division about the missing logs. The log department representative that Mr. Goodall spoke with indicated that he was not aware of a "no dispatch" order being place on Mr. Goodall. "No dispatch" orders are entered into the company's computer by the safety department when there is an issue regarding driver compliance, truck safety or other related issues that the safety department feels need to be resolved.

Mr. Goodall spoke to Jerry Artress on Monday, September 20, 2010 and Mr. Artress confirmed the company's need to have the original of his copies of his logs indicating the delay in the company receiving the logs was the reason that the "no dispatch" was in place. As an alternative to Mr. Goodall faxing the 60 pages of logs at his own expense or submitting them again by private mail carrier, Mr. Artress offered to arrange a load from Beardstown, Illinois, near the claimant's residence, to Fort Dodge, Iowa. The employer's intention was to allow the claimant to drop off the logs at a company facility en route and resolve the issue. The claimant declined the offer.

Mr. Goodall anticipated that the employer might be considering discharging him because Mr. Goodall had previously filed a wage and hour complaint against the company for past pay. When Mr. Artress and the claimant's dispatcher were unwilling to make recorded statements promising that the claimant would not be discharged for any reason, the claimant's anticipation that the employer might be planning to discharge him was enhanced.

Subsequently Mr. Goodall was again contacted by Mr. Artress who emphasized the company's need to have the truck "run" and have Mr. Goodall resume his duties. At that time the claimant stated that he was already working another job. When Mr. Artress stated that Mr. Goodall needed to decide between CRST or the new employer, Mr. Goodall stated, "I'll let you know." In a conversation two days later Mr. Goodall offered to turn the company's truck in but later decided to let the company come and pick up its own equipment from his residence.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes good cause for quitting attributable to the employer. It does not.

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(29) provides:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee

who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to an employer for leaving the employment is not a subjective test as to whether the employee themselves feel they had good cause but an objective test as to whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988). See also O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (Iowa 1993).

The administrative law judge concludes based upon the evidence in the record that the claimant left this employment based upon his anticipation that he might be discharged by the company because he had filed a wage and hour complaint approximately one month previously. Mr. Goodall's anticipation that he might be discharged was enhanced when the company had requested a doctor's excuse covering the claimant's refusal to take dispatches on September 10 and 11, 2010. The claimant had also been told by his dispatcher that the company was thinking of firing him. Although the company later confirmed that they were not considering firing him, the claimant was not immediately allowed to return to work the next week because the company had not received or could not locate approximately 60 pages of log that the claimant had previously transmitted electronically. After attempting once, Mr. Goodall was unwilling to resubmit the logs either by fax or by mail and was not willing to accept a special dispatch that would have routed him past a company facility where he could personally drop off the records. The claimant anticipated that when he arrived at the employer's facility the company would take possession of his truck and discharge him.

The employer made a final attempt to have Mr. Goodall resume his employment when Mr. Artress called and suggested that the company truck needed to be running and Mr. Goodall needed to be working. When Mr. Goodall cited potential new employment with another company the claimant was informed that he needed to decide whether it was working for "us or them." Mr. Goodall stated that he would let the company know and subsequently offered to turn in the company truck.

For the above-stated reasons the administrative law judge concludes that the claimant was the moving party in initiating the separation from employment. The company had rescinded its previous statement about thinking about firing the claimant and had provided reasonable methods to the claimant for submitting the required driving logs.

While Mr. Goodall believes his reasons for leaving may have been personal good cause reasons they were not good cause reasons attributable to the employer. Benefits are withheld.

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.

**DECISION:**

The representative's decision dated October 26, 2010, reference 01, is reversed. The claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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