

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK WARE
Claimant

APPEAL NO. 11A-UI-07661-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST FLATBED REGIONAL INC
Employer

**OC: 05/01/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Non-disqualifying Employment Separation

STATEMENT OF THE CASE:

The claimant appealed a representative's May 31, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge. The claimant participated in the hearing. Sandy Matt, a human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2010. He worked full time as an over-the-road team driver. To drive the employer's dedicated routes, the claimant had to drive with another driver.

In February 2011, the claimant did not have a co-driver and could not drive. After sitting around for awhile because he did not have a team driver, a dispatcher told the claimant that if he leased a truck from the employer and worked as an owner operator, he could earn money. The claimant understood that if he did not like working as an owner operator, he could return as a team driver on a dedicated route.

The claimant decided to try working as an owner operator so he could earn some money instead of doing nothing while he waited for a team driver. The claimant did not own a tractor trailer, but he could lease one from the employer. As an owner operator, the claimant could decline loads which he could not do when he worked as a team driver. The employer considered him an independent contractor when he leased a truck. The claimant worked as an owner operator February 18 through April 30, 2011.

The claimant was not making enough money as an owner operator and stopped working as an owner operator. When he asked about working as a team driver again, the employer told him there were no openings.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant quit working as a dedicated driver or that the employer discharged him as a dedicated driver. Instead, he was laid off when he did not have a co-driver to drive with. The claimant's employment separation occurred when he was laid off. He was laid off when he decided to try work as a solo driver by leasing a truck from the employer. If the claimant had been actually working and decided to lease a truck from the employer, the outcome could be different. In this case, when the claimant was sitting around waiting for another driver to drive with him, he could have filed a claim for benefits. Instead, while he was laid off, the claimant tried to make money following up on the employer's suggestion to lease one of the employer's trucks and work as what the employer decided was an independent contractor. The question of whether the claimant was an independent contractor or an employee is not an issue in this case and will not be addressed.

Since the reasons for the claimant's employment separation occurred because he was laid off when he did not have a team driver, the claimant is qualified to receive benefits as of May 1, 2011. The employer's account is subject to charge.

DECISION:

The representative's May 31, 2011 determination (reference 01) is reversed. The claimant did not voluntarily quit and the employer did not discharge him for reasons constituting work-connected misconduct. Instead, the claimant was laid off from work when he could not drive because he did not have a co-driver. As of May 1, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw