

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STEVEN B COBB
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CRST INC
SHEAKLEY UNISERVICE INC
P O BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-09209-BT
OC: 08/01/04 R: 12
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed an unemployment insurance decision dated August 18, 2004, reference 01, which held that Steven Cobb (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 September 16, 2004. The claimant participated in the hearing. The employer participated through Sandy Mott, Human Resources Specialist.

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 trainer from June 6, 2003 through June 25, 2004. He took time off for a couple weeks and was scheduled to return to work on July 16, 2004 but he was a no-call/no-show that day. He called his dispatcher the next day and stated that he could not return to work because of nerves and his high blood pressure. The claimant stated that his doctor took him off work, but he never provided the employer with any medical documentation. He did not want to return to work for the employer because he did not want to train new drivers and did not want to get assigned to a new driver. The employer left the claimant a message on July 20, 2004, but the claimant never returned the call and did not contact the employer.

The claimant filed a claim for unemployment insurance benefits effective August 1, 2004 and has received benefits after the separation from employment in the amount of \$1,550.00.

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 Sections 96.5-1 and 96.5-2-a.

The employer did not discharge the claimant and continues to have work available if the claimant would return to work. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated his intent to quit and acted to carry it out when he failed to return to work on and after August 16, 2004. The evidence is clear that he did not want to return to work. He has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code Section 96.6-2.

The claimant contends he left his employment due to a work-related medical condition but he never provided any documentation to substantiate his claim. There also does not appear to be a workers' compensation claim. An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated August 18, 2004, 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 claimant is overpaid benefits in the amount of \$1,550.00.

sdb/s