

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DISEAN H LEWIS

Claimant

APPEAL NO. 10A-UI-09866-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 05/16/10

Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 30, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 30, 2010. Claimant Disean Lewis participated. Sandy Matt, Human Resources Specialist, represented the employer and presented additional testimony through Loren Unger, Fleet Manager. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Lewis 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: Disean Lewis was employed by CRST Van Expedited as a full-time over-the-road truck driver from October 2008 and last performed work for the employer on March 26, 2010. Mr. Lewis' immediate supervisor was Loren Unger. On March 27, 2010, Mr. Unger directed Mr. Lewis to report to his assigned terminal to take a refresher class on driver log documentation. Mr. Lewis had undergone another refresher class in driver log documentation in January 2010, but continued to have multiple logbook errors. Rather than report for the driver log documentation class as directed, Mr. Lewis left his assigned truck at a Wal-Mart in Texas, rented a car, and went home to California. Mr. Lewis never returned to the employment. After Mr. Lewis had been away from work for 50 days, the employer deemed his employment terminated.

Mr. Lewis's driving partner was his mother. Once Mr. Lewis and his mother returned to California, Mr. Lewis' mother experienced health issues that impacted her ability to return to the employment. Mr. Lewis, however, had nothing to prevent him from returning to the employment. The employer had provided Mr. Lewis' contact information to other drivers who needed a driving partner. Multiple drivers had contacted Mr. Lewis to request that he become a driving partner. Mr. Lewis declined these requests because he did not want to drive with anyone except his mother.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 weight of the evidence in the record establishes a voluntary quit, not a discharge. Mr. Lewis and his mother left the employer's truck in an unauthorized area from which the employer had to retrieve its truck. Mr. Lewis failed to complete the logbook re-training. Mr. Lewis left work and never returned. The employer continued to have work for Mr. Lewis.

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.

The weight of the evidence indicates that Mr. Lewis voluntarily quit the employment for personal reasons and not for good cause attributable to the employer. Mr. Lewis' reason for not returning to the employer centered on his desire to drive only with his mother. This was a personal preference, not good cause attributable to the employer, which attempted to facilitate Mr. Lewis continued employment. Mr. Lewis 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. Lewis.

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 30, 2010, 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/pjs