

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRAIG EVANS**

Claimant

**APPEAL NO. 12A-UI-06631-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**

Employer

**OC: 05/13/12**

**Claimant: Respondent (2-R)**

Section 96.5-1 – Layoff

**STATEMENT OF THE CASE:**

CRST Van Expedited, Inc. filed a timely appeal from a representative's decision dated May 30, 2012, reference 02, which held the claimant eligible to receive unemployment insurance benefits, finding the claimant was laid off work on August 14, 2011, due to lack of work. After due notice was issued, a telephone hearing was held on July 31, 2012. Although duly notified, the claimant was not available at the telephone number provided. The employer participated by Ms. Sandy Matt, human resource generalist. Employer's Exhibit 1 was received into evidence.

**ISSUE:**

At issue is whether the claimant was separated from employment under disqualifying conditions on or about August 14, 2011.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Craig Evans began employment with CRST Van Expedited on May 10, 2011. The claimant was hired as a full-time over-the-road tractor trailer driver and was paid by the mile. Mr. Evans continued in that capacity until September 22, 2011, when the claimant was transferred at his request to a dedicated route for the company. Mr. Evans remained employed and continued to be paid in the same manner until April 5, 2012, when he chose to leave the employment of CRST Van Expedited to enter into self-employment as an owner-operator.

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

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 evidence in the record establishes that Mr. Evans was not separated by CRST Van Expedited on or about August 14, 2011. The evidence in the record establishes the claimant continued to be employed in his same capacity until September 22, 2011, when, at his request, he was transferred to a different division of the company for a dedicated route. The claimant's employment with CRST continued until a later date, when the claimant quit to enter into self-employment as an owner-operator.

Based upon the evidence in the record, the administrative law judge concludes the claimant was not laid off work under disqualifying conditions on or about August 14, 2011, and that the claimant chose to voluntarily leave employment to enter into self-employment on April 5, 2012. The reasons for the claimant's separation from employment were not 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.

The issue of whether the claimant must repay unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated May 30, 2012, reference 02, is reversed. The claimant voluntarily left employment without good cause attributable to the employer on April 5, 2012. No separation from employment occurred on or about August 14, 2011. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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