

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEMETRICE GRANGER

Claimant

APPEAL NO: 12A-UI-03550-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 07/03/11

Claimant: Respondent (2-R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

CRST Van Expedited, Inc. (employer) appealed an unemployment insurance decision dated March 30, 2012, reference 03, which held that Demetrice Granger (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 April 24, 2012. The claimant participated in the hearing with Elliot Floyd. The employer participated through Sandy Matt, human resources specialist, and Kyle Brockmeyer, fleet manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time over-the-road truck driver on April 21, 2011 and worked through August 10, 2011. She and co-driver Elliot Floyd had a problem with a load in Indiana on July 16, 2011. Fleet Manager Kyle Brockmeyer testified that the claimant and Mr. Floyd "took it upon themselves to 'deadhead' the employer's equipment from that area to their home location in Texas, where they dropped the truck at the drop yard in Dallas." When an employee is scheduled for home time, the employer finds a load for the employee to pick up to deliver near their home location so the truck continues to operate for the employer. Deadheading or dead mileage is the movement of commercial vehicles in a non-revenue mode for logistical reasons. The claimant testified that she did not drive the truck to Dallas and knew nothing about the trip until they were close to arriving home, since she was sleeping at the time.

Mr. Brockmeyer testified that he could not contact either Mr. Floyd or the claimant after that. However, the claimant returned to work shortly thereafter and her last day of work was

August 10, 2011. She testified that she could not work with the female co-driver to whom she had been assigned because the co-driver lost control of her bowels in the driver's seat. Mr. Brockmeyer was unaware of any problems like that. The claimant had to pick another co-driver, since the employer operates its trucks with two drivers. She said the employer continued sending her the same names and none of these individuals would work for her. The claimant testified that she only had 30 days to find a co-driver and if she did not find one in that time frame, she would have to begin her employment over. Mr. Brockmeyer testified that the employer works with employees and they have longer than 30 days if they have problems finding a co-driver. The employer never heard from the claimant after that and the claimant was removed from the employer's system as of September 12, 2011 due to job abandonment.

The claimant testified that she continued to look for a co-driver but could not find one. However, Iowa Workforce records revealed that the claimant began working for Demco Express on August 19, 2012 and worked through September 16, 2011, when she voluntarily quit. Iowa Workforce issued a decision dated March 5, 2012, reference 02, which held that the claimant was working for Demco as an independent contractor working on a self-employed basis.

The claimant filed a claim for unemployment insurance benefits effective July 3, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or return to work for the employer after August 10, 2011. She entered self-employment with Demco Express on August 19, 2011. The law presumes it is a quit without good cause attributable to the employer when an employee leaves to enter self-employment. 871 IAC 24.25(19).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 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 § 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 could 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 unemployment insurance decision dated March 30, 2012, reference 03, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw