

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN C BRYANT
Claimant

APPEAL NO. 11A-UI-02371-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 12/26/10
Claimant: Respondent (1-R)

Section 96.5-1-d – Attempt to Return to Employment After Medical Release

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated February 18, 2011, reference 02, which held that the claimant left work on December 11, 2010, because of illness or injury and that after recovering offered to return to work but no work was available. After due notice was issued, a telephone hearing was held and consolidated with 11A-UI-02828-NT on March 23, 2011. The claimant participated personally. The employer participated by Ms. Sandy Matt, human resource specialist.

ISSUE:

At issue is whether the claimant left employment because of an illness or injury upon the advice of a physician and upon recovery immediately notified the employer but no work was available.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Calvin Bryant began his employment with CRST Van Expedited, Inc. on May 28, 2009, as a full-time over-the-road tractor trailer driver. On or about December 14, 2010, Mr. Bryant was advised by his doctor not to return to his truck driving duties, as his blood pressure was too high and exceeded DOT medical limitations. After taking one or more additional trips at the request of the company, Mr. Bryant was placed on a medical leave of absence and began receiving short-term disability through the company's insurance carrier. On or about January 17, 2011, the claimant's leave of absence status ended and the claimant received no further short-term disability, although he had submitted the required medical documentation to the company. Company management was aware that Mr. Bryant had been fully released by his physician and aware that Mr. Bryant immediately wished to resume his truck driving work. Mr. Bryant was not allowed to return, however, because the company could not find a "team driver" to work with the claimant on the company truck.

Subsequently, after a period of time had elapsed, Mr. Bryant concluded that the employer was not going to allow him to return as an employee. Mr. Bryant then sought to perform services for the company as an owner-operator independent contractor. CRST Flatbed Regional Inc. and Mr. Bryant began an independent contractor/owner-operator relationship on March 4, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was separated from employment with good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The claimant was separated from his employment on or about January 17, 2011, when the claimant submitted medical documentation to the employer verifying that he had been certified as able to return to work and the employer did not re-employ him. The administrative law judge finds the claimant's testimony that he repeatedly supplied documentation and repeatedly informed company management that he was released and willing to return to work at that time to be credible. When Mr. Bryant had informed the company on December 14, 2010, of his high blood pressure and the determination by his doctor that he was unable to drive the company truck, the employer did not discharge Mr. Bryant at that time and the claimant did not quit his employment. The parties instead agreed that the claimant would begin a medical leave of absence and receive short-term disability until released by his physician. When the claimant was fully released, the company was informed but did not re-employ Mr. Bryant as a company employee driver, because the employer could not locate a co-driver for the claimant.

The claimant's separation from employment that took place on January 17, therefore, was due to lack of work under non-disqualifying conditions.

Because the claimant subsequently entered in a form of self-employment as a driver contracted to the company, the issue of the claimant's availability beginning January 17, 2011, is remanded to the Unemployment Insurance Services Division for investigation and the issuance of an appealable determination.

DECISION:

The representative's decision dated February 18, 2011, reference 02, is affirmed as modified. The claimant was separated due to a lack of work effective January 17, 2011, and is eligible to receive unemployment insurance benefits thereafter, provided he meets all other eligibility requirements of Iowa law. Because the claimant subsequently entered in a form of self-employment as a driver contracted to the company, the issue of the claimant's availability beginning January 17, 2011, is remanded to the Unemployment Insurance Services Division for investigation and the issuance of an appealable determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw