

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY R BYARS
Claimant

APPEAL NO. 12A-UI-09884-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 07/01/12
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

CRST Van Expedited Inc. filed a timely appeal from a representative's decision dated August 6, 2012, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 9, 2012. The claimant participated. The employer participated by Ms. Angie Stastny, Director of Human Resources.

ISSUE:

The issue in this matter is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Kimberly Byars was employed by CRST Van Expedited as an over-the road tractor trailer driver. Ms. Byars began her employment in May of 2011. The claimant's last day of employment was September 3, 2011 when she voluntarily quit employment to relocate to a different geographic area.

Ms. Byars had made requests to transfer to another division of CRST Incorporated or in the alternative to be allowed to become an owner/operator working under contract with the company. The claimant's intention was to find work closer to her home location in Lansing, Michigan so that the claimant could be home to provide care for her children.

Although it appears that Ms. Byars was on a waiting list to become an owner/operator, she was unable to make that transition by the date that school had began. The claimant therefore left employment with CRST Van Expedited to return to her home on September 3, 2011. Continuing employment as an over-the-road tractor trailer driver for CRST Van Expedited continued to be available to the claimant at the time of her leaving.

It is the claimant's position that the company could have acted more quickly to facilitate her becoming an owner/operator but did not do so.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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 the claimant was not laid off by CRST Van Expedited on September 3, 2011 but that the claimant voluntarily left employment for personal reasons to return to Lansing, Michigan to provide care for her children. While this is a good-cause reason from her personal viewpoint, it is not a good-cause reason attributable to the employer. Unemployment insurance benefits are therefore 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.

DECISION:

The representative's decision dated August 6, 2012, reference 02, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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