

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR WARE
Claimant

APPEAL NO: 07A-UI-00678-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST INC
Employer

OC: 12/10/06 R: 12
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed an unemployment insurance decision dated January 9, 2007, reference 01, which held that Victor Ware (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 February 5, 2007. The claimant participated in the hearing. The employer participated through Sandy Matt, Human Resources Specialist. 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's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from June 18, 2004 through November 24, 2006 when he voluntarily quit for personal reasons. His last regularly scheduled workday was November 16, 2006 and he was scheduled off for one week. Instead of returning to work on November 24, 2006, the claimant called in and asked for an extension of personal leave due to family problems. He called the employer on November 27, 2006 and found out that his truck had been reassigned to someone else so he told the dispatcher he was leaving for family and personal reasons. If an employee is absent for ten days, his or her truck is reassigned to another driver so the employer can begin to use the truck again. There was work available for the claimant when he voluntarily quit.

The claimant filed a claim for unemployment insurance benefits effective December 10, 2006 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 him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code section 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 his intent to quit when he failed to return to work on November 24, 2006. He carried out the intent to quit when he told the dispatcher he was quitting due to family and personal reasons.

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

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 9, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,160.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs