

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>PATRICIA A LYNN</b> Claimant	68-0157 (9-06) - 3091078 - EI
<b>CRST VAN EXPEDITED INC</b> Employer	<b>APPEAL NO. 11A-UI-11197-JTT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 07/24/11</b> <b>Claimant: Respondent (2-R)</b>

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 19, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 16, 2011. Claimant Patricia Lynn participated. Sandy Matt, human resources specialist, represented the employer. Exhibits One and Two were received into evidence.

**ISSUES:**

Whether Ms. Lynn separated from her employment with CRST for a reason that disqualifies her for unemployment insurance benefits.

Whether Ms. Lynn was an independent contractor or an employee of CRST at the time she last performed work for that company.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Patricia Lynn began full-time employment with CRST Van Expedited in May 2010 and worked as an over-the-road truck driver. On October 13, 2010, Ms. Lynn signed an Independent Contractor Operating Agreement with CRST. At that point, her compensation changed from \$0.41 per mile driven to a substantially larger, percentage-based compensation. At that point, Ms. Lynn became responsible for the truck payment, for insurance on the truck, for fuel, and for maintenance on the truck. Ms. Lynn purchased the truck from the CRST fleet after she rejected the truck CRST initially offered to sell her. The owner-operator lease agreement between Ms. Lynn and CRST restricted Ms. Lynn to hauling only for that company and restricted who she could have in her truck. Prior to executing the agreement, Ms. Lynn was not free to reject loads the employer assigned to her. After entering into the agreement, Ms. Lynn could reject loads, but would suffer the financial impact of doing so.

Ms. Lynn continued to haul freight for CRST under the terms of the Independent Contractor Operating Agreement until late December 2010, when she ceased performing work due to a blocked artery. On December 27, Ms. Lynn contacted her fleet manager to let him know she was going to be hospitalized. Ms. Lynn underwent bypass surgery on January 17, 2011, was

discharged from the hospital a couple days later, has continued under a doctor's care, and has recently been released to perform local truck driving. When Ms. Lynn notified the fleet manager that she was going to be sidetracked by health issues for an extended period, she and the fleet manager entered into an agreement whereby CRST would reassert ownership of the truck and Ms. Lynn would be relieved of liability for the truck once expenses incurred up to that point had been paid. CRST provided Ms. Lynn with a settlement check after deducting truck expenses.

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

The weight of the evidence in the record indicates that as of October 13, 2010 Ms. Lynn was a self-employed, independent contractor, and no longer an employee of CRST. See 871 IAC 23.19 for the factors that distinguish an independent contractor from an employee.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record indicates that prior to October 13, 2010, Ms. Lynn was a full-time employee of CRST Van Expedited. The evidence further indicates that effective October 13, 2010, Ms. Lynn voluntarily terminated the employment relationship so that she could enter into an independent contractor relationship with CRST. In other words, Ms. Lynn voluntarily quit the employment on October 13, 2010 to enter into self-employment.

A worker who voluntarily quits employment to enter into self-employment is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(19).

Based on the evidence in the record, the administrative law judge must conclude that Ms. Lynn voluntarily quit the employment on October 13, 2010 without good cause attributable to the employer. Accordingly, Ms. Lynn is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Lynn.

Iowa Code section 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 section 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 would 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 Agency representative's August 19, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded 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.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/kjw