

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL VANCE

Claimant

APPEAL NO: 09A-UI-17044-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 10-18-09

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 4, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 17, 2009. The claimant participated in the hearing. Sandy Matt, Human Resources Specialist and Tiffany Ryan, Fleet Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for CRST Van Expedited from January 15, 2009 to July 24, 2009. His co-driver notified the fleet manager the claimant told him that he was not coming back to work after their last trip. The employer attempted to contact the claimant July 6 and 8, 2009, and left messages for him but he did not return its calls. He had not been disciplined for several months and the employer had work available for him. The claimant testified his co-driver said he had another co-driver because he thought the claimant quit although the claimant said he told his co-driver he was going to quit in a “joking” manner because he was not making enough money. After being home six days and waiting three or four more days the claimant called John Brown, who was with the leasing program, to discuss becoming an owner operator but Mr. Brown checked his employment status on the computer and told him the employer listed him as being terminated. The claimant did not contact the fleet manager or human resources to find out why his employment was terminated or to say he did not quit his job. He also testified he wanted a local route or job and after he had been home for two weeks he got “settled in” and thought he would look for another job. After he applied for a couple of jobs but was not hired he believes because he has a felony conviction, he stated he decided to stay home and draw unemployment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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 means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant maintains he did not quit his job, the employer did not terminate his employment. When his co-worker told the claimant he thought he quit the claimant did not contact the fleet manager or human resources to tell it he did not quit and when the leasing program manager told him the computer showed his employment status as "terminated" the claimant did not contact the fleet manager or human resources to ask why he was fired. The claimant has not demonstrated that his leaving was due to unlawful, intolerable or detrimental working conditions but did say that after being home for a couple of weeks he "got settled in" and decided to look for a local job. After applying for a few other positions and not being hired he applied for unemployment insurance benefits. The employer had continuing work available for him but he chose not to return to the employer. Under these circumstances the administrative law judge must conclude the claimant voluntarily left his employment without good cause attributable to the employer as defined by Iowa law. Therefore, benefits must be denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The November 4, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and

whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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