

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANTHONY S CHERRY
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PHILADELPHIA PA 19145

CRST INC
c/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-04218-DT
OC: 03/21/04 R: 12
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

CRST, Inc. (employer) appealed a representative's April 5, 2004 decision (reference 01) that concluded Anthony S. Cherry (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 6, 2004. The claimant received the hearing notice and responded by calling the Appeals Section on April 19, 2004. He indicated that he would be available at the scheduled time for the hearing at telephone number 215/462-3439. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. Sandy Matt appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 15, 2003. He worked full time as an over-the-road truck driver in the employer's transportation company, working out of the employer's Carlisle, Philadelphia terminal. His last day physically worked was on or about January 21, 2004. At that time, he requested his dispatcher for permission to take his truck home because his brother had been injured. The dispatcher granted permission. The claimant was informed that he would be scheduled to pick up a load on or about January 29. The day prior to the scheduled pick up, the claimant confirmed that he would be picking up the load. However, he did not pick up the load and did not contact the employer. The employer recontacted the claimant and arrangements were made for the claimant to pick up the load the following day. However, he did not pick up the load that day, either, and did not contact the employer. The employer then made arrangements to have the truck towed from the claimant's home. The claimant did not again contact the employer until a week to ten days later when he asked for his job back but was refused.

The claimant established a claim for unemployment insurance benefits effective March 21, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$830.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out by failing to pick up his load or contact the employer, effectively abandoning his job. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code Section 96.6-2. The claimant has not satisfied his burden. 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 representative's April 5, 2004 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of January 31, 2004, benefits are withheld until such time as the claimant 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 is overpaid benefits in the amount of \$830.00.

ld/kjf