

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN SCOTT**  
Claimant

**APPEAL NO. 09A-UI-05416-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRST VAN EXPEDITED INC**  
Employer

**OC: 02/22/09**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Kevin Scott filed a timely appeal from the March 26, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 4, 2009. Mr. Scott participated. Sandy Matt, Human Resources Specialist, represented the employer and presented additional testimony through Greg Semelroth, Fleet Manager.

**ISSUE:**

Whether Mr. Scott separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kevin Scott started his employment with CRST Van Expedited on September 6, 2007 and worked as a full-time over-the-road truck driver. Mr. Scott last performed work for the employer on November 13, 2008. During the first six months of the employment, Mr. Scott hauled general freight. When Mr. Scott performed that work, he might be away from home three weeks at a time. Mr. Scott would then be home four to five days before he would go out on another run.

During the last eight months of the employment, Mr. Scott was assigned to a dedicated run for customer DHL. When Mr. Scott performed that work, he collected a load in Allentown, Pennsylvania on Tuesday evening, hauled the load to California, and arrived home on the next Monday. Mr. Scott worked as part of a team with co-driver Jessie Harris. Mr. Scott's immediate supervisor was Fleet Manager Greg Semelroth. Mr. Semelroth had selected Mr. Scott and Mr. Harris for the DHL dedicated route because they lived in the area of the DHL terminal and because they had previously performed well for the employer.

DHL ceased operations in November 2008. This ended the dedicated route. Mr. Semelroth notified Mr. Scott and Mr. Harris that the dedicated route was coming to an end. The team finished its last load for DHL on November 13, 2008. CRST did not have another dedicated route available. CRST lost approximately 60 dedicated routes in connection with the economic slowdown. The employer continued to have general freight routes available for Mr. Scott and

Mr. Harris. Mr. Semelroth proposed that the pair haul general freight until such time as a new dedicated route became available. Mr. Scott and Mr. Harris were both disappointed that a new dedicated route was not available. Mr. Harris did not want to haul general freight again because he could be sent to broad geographical area. Mr. Scott was sympathetic to his partner's concern. Mr. Scott did not want to haul general freight because it would mean three weeks on the road without seeing his family. After somewhere between one and three weeks with the truck sitting idle, Mr. Semelroth required that Mr. Harris and Mr. Scott return the employer's truck. Mr. Scott was willing to take on a new dedicated route, but was unwilling to consider hauling general freight.

Mr. Scott waited three months before he established the claim for benefits that was effective February 22, 2009.

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

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 indicates that Mr. Scott initiated the separation from the employer by refusing to accept general freight loads the employer had available for him after the dedicated route came to an end.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight of the evidence indicates that the conditions of employment associated with the dedicated DHL line became the established conditions of the employment during the final eight months of the employment. The question is whether the employer's request that Mr. Scott accept general freight work constituted a significant change in the conditions of the employment. The proposed changes centered on the geographical area served, the work schedule, and time away from home. With the dedicated run, Mr. Scott had to travel back and forth between Allentown, Pennsylvania and California. With the general freight run, Mr. Scott could be assigned loads that would take him to any of the 48 contiguous states. With the dedicated run, Mr. Scott could count on being home once a week. With the general freight loads, Mr. Scott could be on the road for three weeks and then would have a few days home before he had to go back out on the road. These schedules would affect Mr. Scott's time with his family and would involve the trade off of more frequent, shorter contacts versus less frequent, longer contact. The parties did not mention any disparity in pay between the duties.

The employer appears to have considered the earlier change from general freight duties to the dedicated run to involve significant changes in condition of the employment—sufficiently so that the employer viewed the dedicated run assignment in part as a reward to Mr. Scott and Mr. Harris for past good performance.

The administrative law judge concludes that the switch from the dedicated run to general freight did in fact involve significant changes in the conditions of employments. The most significant change was the change in work schedule that took Mr. Scott away from his family for three weeks at a time instead of a week or less at a time. The voluntary quit was for good cause attributable to the employer. Mr. Scott's refusal to accept the changed conditions would not prevent him from being eligible for unemployment insurance benefits. Mr. Scott is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Scott.

**DECISION:**

The Agency representative's March 26, 2009, reference 02, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs