

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT L MORTON**  
Claimant

**APPEAL NO. 07A-UI-05969-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DILTS TRUCKING INC**  
Employer

**OC: 05/20/07 R: 01  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Robert Morton filed an appeal from a representative's decision dated June 7, 2007, reference 01, which denied benefits based upon his separation from Dilts Trucking, Inc. After due notice was issued, a hearing was scheduled for and held on July 31, 2007, in Council Bluffs, Iowa. Mr. Morton participated personally with witnesses Kim Sharp and Betty Ruffcorn. The employer participated by Mr. Don Dilts, vice president/safety director. Exhibits One through Five were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer from November 2004 until April 7, 2007, when he quit employment. Mr. Morton worked as a full-time over-the-road tractor trailer driver and was paid by the mile. His immediate supervisor was Dispatcher Roger Longmeyer. Mr. Morton left his employment with Dilts Trucking, Inc., because of a medical condition that was exacerbated by the tractor unit that Mr. Morton was assigned to drive. The claimant had previously been assigned to drive an older tractor unit and had experienced no physical problems. After being assigned to a newly purchased unit in 2005, Mr. Morton began to experience significant neck pain and associated vision problems. The claimant attributed his physical issues to the rough-riding characteristics of the new unit that he had been assigned to. Mr. Morton made repeated requests to individuals that he believed had authority to allow him to be placed in a different tractor unit so that he could continue in employment. Mr. Morton visited his medical doctor at the Veteran's Administration regarding his problem and was advised to make changes in his employment or to find a different occupational field because of medical aggravation to his neck being caused by his employment. The claimant continued in employment for an extended period because of a need for gainful employment but continued to make periodic requests to be assigned to a different tractor unit.

Mr. Morton made a final decision to leave his employment because of additional strain on his neck that was caused by a trip to Topeka, Kansas, on or about April 6, 2007. Because of increased pain and vision problems caused by the ride of this truck on that trip, the claimant made a final request to the company's safety director via telephone to be allowed to change to a different truck. Mr. Morton indicated that he would be required to leave employment if he were required to continue operating the same tractor unit. When the claimant received no positive answer from the employer, he quit employment, leaving company property in the truck to use at the employer's facility as directed.

The claimant had been involved in a minor accident some weeks before while temporarily operating the company truck for personal business with the approval of his dispatcher. This played no significant part in the claimant leaving employment.

It is the employer's position that although numerous over-the-road tractors had potentially become available during the months preceding Mr. Morton's leaving, the claimant hadn't made his request to change trucks to the proper management individuals. Mr. Morton was considered to be a good and valued employee. The company experienced no significant work problems with Mr. Morton prior to his leaving.

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

The administrative law judge concludes, based upon the evidence in the record, that the claimant has established good cause for leaving employment for reasons that were attributable to the employer. The evidence in the record establishes that Mr. Morton was experiencing significant neck problems after being assigned to a new over-the-road tractor that was especially rough-riding. Because of ongoing problems, the claimant had been advised by his physician to make changes in his employment or to seek other work. Mr. Morton followed a reasonable course of action by putting the employer on notice of the condition on numerous occasions and also gave the employer reasonable opportunities to address his medically-related job issue. After an especially grueling trip to Topeka, Kansas, in the rough-riding tractor, Mr. Morton's pain level was exacerbated and the claimant made the decision to leave employment if the employer were not willing to re-assign him to his previous over-the-road tractor or one of the numerous tractors available with better ride characteristics. The claimant provided final notice to the company via a telephone call to its safety director, at which time Mr. Morton indicated that he would be required to leave his employment if he could not be assigned to a better-riding over-the-road tractor. The claimant left employment following the instructions that were given to him and was not offered a change in equipment at that time by the employer.

Although the administrative law judge is cognizant that the employer believes that Mr. Morton did not follow the exact chain of command in making his request, the administrative law judge concludes that the claimant was reasonable in his belief in repeatedly telling dispatchers and management individuals of the problem was sufficient. Mr. Morton testified with specificity, however, at times, the employer witness was unable to "recall" the exact nature of conversations between the parties. Although this is understandable based upon the numerous duties assigned to Mr. Dilts, the administrative law judge concludes that more weight must be given to the claimant's testimony.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

For the reasons stated herein, the administrative law judge finds the claimant left employment with good cause for reasons that were attributable to the employer.

**DECISION:**

The representative's decision dated June 7, 2007, reference 01, is hereby reversed. The claimant left employment for reasons attributable to the employer. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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