

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L ESPINOZA
Claimant

APPEAL NO. 09A-UI-01510-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**OC: 12/28/08 R: 01
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Van Diest Supply Company filed a timely appeal from an unemployment insurance decision dated January 21, 2009, reference 01, that allowed benefits to David L. Espinoza. After due notice was issued, a telephone hearing was held February 19, 2009 with Mr. Espinoza participating. Personnel Manager Carolyn Cross participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: David L. Espinoza was employed as a semi driver by Van Diest Supply Company from October 7, 1997 until he resigned December 26, 2008.

Mr. Espinoza was involved in an accident on December 23, 2008 when he blacked out while driving for the employer. As a result of this the employer told Mr. Espinoza that he could no longer work as a driver. The employer offered to let him continue working in the factory. Mr. Espinoza declined to make that change because of the chemicals that irritated his lungs which had been damaged by an earlier case of pneumonia. Mr. Espinoza still has a CDL.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant left work with 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.

An individual may receive unemployment insurance benefits if the individual resigns because of a substantial change in the conditions of employment. See 871 IAC 24.26(1). In analyzing such a case, the administrative law judge cannot consider the employer's rationale for making the change. He may only consider the impact of the change on the claimant. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). The evidence in the record establishes that the employer proposed a significant change in Mr. Espinoza's duties and that Mr. Espinoza resigned because of that change. Benefits must be allowed.

DECISION:

The unemployment insurance decision dated January 21, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs