

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GALVIN, GERALD, J
Claimant

APPEAL NO. 13A-UI-02875-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 01/27/13
Claimant: Respondent (1-R)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 5, 2013, reference 01, decision that allowed benefits based on an agency conclusion that the claimant had voluntarily quit due to a substantial change in the contract of hire. After due notice was issued, a hearing was held on April 8, 2013. The hearing in this matter was consolidated with the hearing an appeal number 13-A UI-02929-JT. Claimant Gerald Galvin participated. Bon Chanthavong, Human Resources Generalist, represented the employer. Exhibits One through Five and A were received into evidence.

ISSUE:

Whether Mr. Galvin 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: Gerald Galvin was employed by Stream International, Inc., on a full-time basis and last performed work for the employer on December 31, 2012. In the summer of 2012, Mr. Galvin was promoted to the position of Senior Customer Support Professional. Mr. Galvin's position of Senior during the last months of the employment involved assisting call center employees with de-escalating calls from irate Sirius/XM customers. Mr. Galvin would walk a circle through the call center floor and would make himself available to assist with customer calls as needed. Mr. Galvin might go days without spending any actual time on the phone with a customer. The Senior position hours were 1:00 p.m. to 10:00 p.m. The position paid \$10.00 per hour. Mr. Galvin's immediate supervisor during the last several weeks in the Senior position was Team Manager Jim Hanson.

Immediately prior to the promotion to the Senior position, Mr. Galvin had been employed by Stream International, Inc., in Dealer Support Services for the Sirius/XM account.

In early December 2012, Linda Carr, Operations Manager, held a meeting with the six Seniors, including Mr. Galvin, and told them that their positions as Seniors would be eliminated effective December 31, 2012. Ms. Carr notified the Seniors that one option they had to continue their

employment was to switch to a "Saves" position. That would involve being on the phone with customers throughout the shift, like the other customer service professionals, and being available to de-escalate calls from irate customers for coworkers as needed. While the Saves position ordinarily paid \$9.50 plus commission, Ms. Carr notified the Seniors that the employer would keep the Seniors at their \$10.00 per hour wage and that they would also be eligible for the commission for saving accounts from customer cancellation. The hours of employment would be the same, 1:00 p.m. to 10:00 p.m. The work would be performed at the same Sergeant Bluff facility. Ms. Carr told the Seniors that another option they had was to apply for any other position that became available within the company. But to do that, they would have to take the immediate step of moving into a Saves position and then wait for an opening in a different position. One position expected to become available was a Chat position, which would pay \$11.00 per hour with no commission. In the Chat position the employee would assist customer service representatives through instant message communications as the other employee dealt with the customer directly. The hours for the Chat position would end earlier in the evening at 7:00 p.m.

Mr. Galvin was not interested in a Saves position or in a Chat position. Mr. Galvin was only interested in returning to his previous position in Dealer Support Services.

After the early December meeting led by Ms. Carr, Mr. Hanson was supposed to speak with each of the Seniors to discuss the available options. Mr. Hanson's discussion with Mr. Galvin was limited to Mr. Galvin asking whether there was a position available for him in the Dealer Support Services area. Mr. Hanson's response was that there was not a position available in that area. While Mr. Hanson met with other Seniors during the week that included December 29, 2012 to learn their choices, Mr. Hanson had no such further discussion with Mr. Galvin. While the employer at some point decided to push back elimination of the Senior positions to January 14 or 15, 2013, the employer did not notify Mr. Galvin of that decision.

When December 31, 2012 came, Mr. Galvin told Mary Kay Schroeder, the Team Manager on duty, that he was going home early "sick" and that since the employer was eliminating his Senior position, he would say his goodbyes. Mr. Galvin was not actually sick, but instead just wanted to use up his remaining sick hours to avoid surrendering it to the employer. Mr. Galvin went home early on December 31 and did not return to the employment thereafter. On December 31, Ms. Schroeder sent an email message to Bon Chanthavong, Human Resources Generalist, about the conversation she had with Mr. Galvin before he left.

On January 2, 2013, Ms. Chanthavong telephoned Mr. Galvin and left a message for Mr. Galvin on his cell phone. In her message, Ms. Chanthavong asked whether Mr. Galvin had quit because she had heard over the weekend that he had quit. Mr. Galvin made a return telephone call to Ms. Chanthavong the same day. Mr. Galvin told Ms. Chanthavong that since his position had been eliminated and since he could not return to his previous position in Dealer Support Services, he was not interested in other opportunities at Stream International.

REASONING AND CONCLUSIONS OF LAW:

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 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.

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).

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not present testimony from Mr. Hanson. While the employer made assertions during the hearing about meetings or discussions Mr. Hanson was supposed to have with Mr. Galvin about the extension of the Senior position to mid-January or about options other than the Saves position, the employer has presented insufficient evidence to establish that Mr. Hanson actually had such discussions with Mr. Galvin. Mr. Galvin asserts such discussions did not occur. The employer presented insufficient to rebut that testimony.

The weight of the evidence in the record establishes that Mr. Galvin voluntarily quit, effective December 31, 2012, in response to a substantial change in the conditions of the employment. Mr. Galvin's only immediate option was to move into a Saves position. While the hours and location of the proposed new position would be the same as the old position, and while the pay would be at least as good, the duties associated with the Saves position represented a substantial change from the duties Mr. Galvin had performed for months in the Senior position. Instead of walking the call center and de-escalating the occasional customer complaint phone call for the customer service professionals as he had done in the Senior position, in the Saves position, Mr. Galvin would be on the phone all day every day. Had Mr. Galvin moved into the Saves position, he would have done so indefinitely, with no specific agreement with the employer that he would be able to move into another position within a reasonable period. Under the law, had Mr. Galvin not promptly quit in response to the substantial change in the conditions

of employment, he would be deemed to have acquiesced in those changes. The fact that other Seniors had additional discussions with Mr. Hanson and were subsequently provided with additional opportunities not discussed with Mr. Galvin makes no difference. Under Dehmel, the employer's motivation for eliminating the Senior position makes no difference.

Mr. Galvin voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Galvin is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

The evidence in the record raises the question of whether Mr. Galvin has met the work availability requirement since he established his claim for benefits. This matter will be remanded to the Claims Division for adjudication of that issue.

DECISION:

The Agency representative's March 5, 2013, reference 01, decision is affirmed. The claimant voluntarily 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.

This matter is remanded to the Claims Division for determination of whether the claimant has met the work availability requirement since he established his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs