

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAGAN B DAVENPORT
Claimant

APPEAL NO. 09A-UI-16338-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 09/27/09
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Stream International, Inc. filed a timely appeal from an unemployment insurance decision dated October 19, 2009, reference 01, that allowed benefits to Dagan B. Davenport. After due notice was issued, a telephone hearing was held December 2, 2009 with Mr. Davenport participating. Human Resources Generalist Stacy Albert and Supervisor John Budde testified for the employer, Stream International, Inc. Claimant Exhibit A was admitted into evidence. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Did the claimant leave employment 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: Dagan B. Davenport was employed by Stream International, Inc. from September 11, 2007 until he resigned effective June 8, 2009. He worked full time as a customer service representative.

In discussions with Human Resources Generalist Stacy Albert prior to the resignation, Mr. Davenport has stated that he was going to leave his employment to work in the construction industry. During the course of the employment, Mr. Davenport had found some aspects of the work undesirable. Raises had been suspended due to economic conditions. From time to time, Mr. Davenport would be assigned to work on different projects because of the changing contracts between the employer and its clients. At the time of the resignation, employees such as Mr. Davenport were being offered the opportunity to train for different programs involving the client Sirius. Mr. Davenport had not volunteered for the change of duties, and none was being forced upon him.

Mr. Davenport received some warnings that he believed were not justified. His job was not in jeopardy, however, at the time of his resignation. He felt that his supervisors showed favoritism

to employees other than himself. Mr. Davenport has received unemployment insurance benefits since filing a claim effective September 27, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does not.

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.

The claimant has the burden of proof. See Iowa Code section 96.5-1. An individual may receive unemployment insurance benefits if the individual has resigned because of intolerable or detrimental working conditions. See 871 IAC 24.26(4). On the other hand, an individual is disqualified for benefits if the individual has resigned because of mere dissatisfaction with the work environment or because of a conflict with a supervisor. See 871 IAC 24.25(21) and (22). The difference is one of degree. Mr. Davenport's evidence establishes a number of features of the work that he did not like. The record does not contain evidence of any egregious bad behavior by the company or the claimant's supervisors. The administrative law judge concludes that the claimant has not established by a preponderance of the evidence intolerable or detrimental working conditions. Therefore, benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay benefits already received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated October 19, 2009, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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