

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY M DALESKE
Claimant

APPEAL NO. 11A-UI-13700-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 09/11/11
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 14, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 8, 2011. Claimant Cathy Daleske participated. Amy Potratz, Human Resources Manager, represented the employer and presented additional testimony through Marissa Mumma, Center Manager.

ISSUE:

Whether Ms. Daleske's voluntary quit was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cathy Daleske was employed by Marketlink, Inc., on a full-time basis from November 2009 until September 14, 2011, when she voluntarily quit in response to changes to the conditions of her employment. For a little more than three months at the end of the employment, Ms. Daleske held the position of Team Lead at the employer's Carroll facility. In the Team Lead position, Ms. Daleske's wage was \$11.25 per hour. In the Team Lead position, Ms. Daleske had supervisory authority over eight sales representatives during the second half of her shift. In the Team Lead position, Ms. Daleske became eligible for vision, dental, and health benefits for which she would not otherwise have been eligible. Ms. Daleske had signed up for the vision and dental benefits.

Prior to being promoted to Team Lead, Ms. Daleske had held a Lead Verifier position nine months. Prior to being promoted to Lead Verifier, Ms. Daleske had been a Verifier for 10 months. In those positions, Ms. Daleske was eligible for a dental benefit through AFLAC. In those positions, Ms. Daleske received an hourly wage, but could qualify for commissions. The commission structure changes from day to day.

On September 14, 2011, Center Manager Marissa Mumma notified Ms. Daleske that her Team Lead position was being eliminated immediately because the Carroll Center did not have a sufficient employee head count to justify the position. Ms. Mumma proposed that Ms. Daleske accept a Verifier position. Though the employer indicates that the Verifier position would pay a

base wage of \$9.60 per hour plus commission, Ms. Daleske understood Ms. Mumma to say that the Verifier position would pay an \$8.90 hourly wage plus commission. The employer's top sales producers had most recently been averaging \$10.59 to \$11.14 per hour with salary plus commission, but there was no guarantee that Ms. Daleske would generate the requisite sales and commissions. Loss of the Team Lead position meant loss of the guaranteed hourly wage, loss of supervisory authority, and loss of eligibility for the vision, health, and particular dental policy. Ms. Daleske was upset by the conversation, so Ms. Mumma gave Ms. Daleske an hour off so that Ms. Mumma could think about what she wanted to do. Ms. Daleske returned after the hour was over and told Ms. Mumma she had worked too hard to accept a demotion. The employer asserts the change was not a demotion.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

The weight of the evidence in the record establishes that Ms. Daleske elected to separate from the employer rather than accept a demotion to a verifier position. The weight of the evidence indicates that the employer is disingenuous when the employer asserts the proposed change

did not involve a demotion. The proposed change brought a loss of supervisory authority, loss of a guaranteed \$11.25 wage, and loss of multiple benefits. The proposed change was indeed two steps down in the chain of command. The changes in the condition of the employment were substantial and made Ms. Daleske's voluntarily quit a quit for good cause attributable to the employer. Ms. Daleske is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Daleske.

DECISION:

The Agency representative's October 14, 2011, 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 she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs