

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS R SWIFT
Claimant

APPEAL NO. 09A-UI-00603-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THREE EAGLES OF FORT DODGE INC
KIAQ/KTLB
Employer

OC: 11-30-08 R: 01
Claimant: Appellant (2)

871 IAC 24.26(1) – Voluntary Leaving – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 7, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 29, 2009. The claimant did participate. The employer did participate through (representative) Deb Nannen, Payroll Manager, and Lee Wallace, Sales Manager. Claimant's Exhibit A was received.

ISSUE:

Did the claimant voluntarily quit his employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an account salesman, full-time, beginning July 9, 2008, through November 30, 2008, when he voluntarily quit.

When the claimant was hired in July, he was told that he would be paid as follows: \$1250.00 semi-monthly (pro-rated) from July 2008 through October 31, 2008. From November 2008 through January 2009, the claimant would be paid \$1000.00 semi-monthly plus 5% commission on all eligible sales. Beginning February 2009, the claimant would be paid \$1000.00 draw against commissions.

In late October, the claimant met with his supervisor Tony Calumet, who informed him that because the business was having financial trouble, they were going to change his rate of pay from what he had been promised in his employment letter of July 2008. The claimant was told that beginning on December 1 his pay would change from the salary plus commission he had been promised to straight commission. The claimant objected to the change in the pay and told Mr. Calumet that he would then in essence be working for the employer for free, because he would not have enough time to build up his accounts in order to earn commissions. Mr. Calumet refused to honor the original pay agreement that the claimant was hired under.

As a result of the change in his rate of pay, the claimant's underlying heart condition was aggravated and he began to suffer an exacerbation of chest pain. The claimant saw his cardiologist, Mark G. Berry, D.O., who determined that the claimant's job stress was causing his symptom exacerbation and that the claimant should quit his employment.

Even if the claimant's job stress due the pay change had not exacerbated his heart condition, the claimant would have quit in any event, because he could not agree to the reduction in pay Mr. Calumet was going to make on December 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment 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.

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.

The employer changed the claimant's rate of pay, in essence making him a straight-commission salesman two months earlier than he had been told in July. The claimant had not had time to build up his accounts and the change in the rate of pay, that is cancelling his salary and making him straight commission, would have meant he would be working for the employer for almost no pay. In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988). Inasmuch as the claimant would suffer a loss of monthly pay that he had been promised in July, the change of the original terms of hire is considered substantial. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The January 7, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw