

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD D SETTELL
Claimant

APPEAL NO. 13A-UI-01784-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOMGAARS SUPPLY INC
Employer

OC: 01/19/14
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ronald Settell filed a timely appeal from the February 7, 2014, reference 01, decision that disqualified him for benefits based on an agency conclusion that he had voluntarily quit without good cause attributable to the employer. After due notice was issued, a hearing was held on March 10, 2014. Mr. Settell participated and presented additional testimony through Virginia Settell and Deb Allard. Barb Bohlke represented the employer. Exhibits A through E were received into evidence.

ISSUE:

Whether Mr. Settell's voluntary quit was for good cause attributable to the employer. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ronald Settell was employed by Bomgaar's Supply Company as a full-time Assistant Manager from October 2012 until January 15, 2014, when he voluntarily quit the employment. Mr. Settell's immediate supervisor throughout the employment was Anita Harris, Store Manager. Immediately prior to October 2012, Mr. Settell and Ms. Harris had worked for Shoppers Supply at the same location. Both became Bomgaar's employees when that company began operating the Bomgaar's at the same location as the previous Shoppers Supply.

On December 18, 2013, Mr. Settell was the closing manager. At the end of the day, as Mr. Settell was preparing the daily deposit, he noted that \$200.00 was missing. Mr. Settell tried to locate the missing money, but could not. After an hour, Mr. Settell contacted Ms. Harris for assistance. Ms. Harris was able to determine two \$100.00 bills were missing. The money was never located.

On December 19, 2013, Don Prittie, Head of Security, questioned Mr. Settell about the missing money. It was the employer's standard operating procedure to begin investigations by speaking with the manager on duty or key holder on duty at the time the loss was first noticed.

Mr. Settell had switched shifts with a coworker so that he could have December 20 off. On December 20, 2013, Mr. Prittie was again at the store investigating the missing money. That evening, the key holder on duty telephoned Mr. Settell at home and told him that Mr. Prittie wanted to meet with Mr. Settell again. Mr. Settell went to the store and met with Mr. Prittie. During that meeting, Mr. Prittie asked Mr. Settell if he enjoyed working at Bomgaar's. Mr. Settell said he did. During that meeting, Mr. Prittie asked Mr. Settell whether he had ever borrowed something from the store and returned it to the store. Mr. Settell denied having done so. Mr. Prittie then asked Mr. Settell if he had taken the \$200.00. Mr. Prittie asked Mr. Settell a number of different ways whether he had taken the money. Mr. Settell denied having taken the money. Mr. Prittie made reference to Mr. Settell having new boots. Mr. Settell said he had just received a \$645.00 payout from his Shoppers Supply 401K retirement fund and that he was in line to receive a worker's compensation settlement payment based on an injury that happened while he was a Shoppers Supply employee. The meeting ended when Mr. Settell became upset and left before Mr. Prittie was finished.

Mr. Settell has multiple mental health diagnoses for which he takes psychotropic medications. Mr. Settell's mental health diagnoses include adjustment disorder with mixed emotions, major depressive disorder, recurrent, and generalized anxiety disorder. When Mr. Settell got home after his meeting with Mr. Prittie, he was sufficiently stressed to feel the need to take two anti-anxiety pills.

On December 21, 2013, Mr. Settell delivered his store keys to Ms. Harris. Mr. Settell said he no longer wanted the keys in light of the way Mr. Prittie had questioned him the night before. No one had asked Mr. Settell for his keys.

Mr. Settell was next scheduled to work on December 24, 2013 at 8:00 a.m. At 7:30 a.m., Mr. Settell telephoned Ms. Harris and asked for the day off. Ms. Harris told Mr. Settell that Steve Lacotta, Area Manager, wanted to speak with Mr. Settell. Mr. Settell reported for his shift at 8:00 a.m. after a couple hours, Ms. Harris summoned Mr. Settell to a meeting with Mr. Lacotta. Mr. Lacotta told Mr. Settell that the employer was ready to move on and forget about the incident concerning the missing \$200.00. Mr. Lacotta told Mr. Settell that the employer also wanted Mr. Settell to move past the matter. However, Mr. Lacotta told Mr. Settell that in light of his getting upset and abruptly departing from the December 20 meeting, Ms. Harris and another key holder would be monitoring his behavior to ensure that he was doing his job, treating customers right, and that his attitude did not interfere with him performing his duties. Mr. Lacotta told Mr. Settell that his longevity with Shoppers Supply and Bomgaar's and his knowledge base were factors in the employer's desire to have the employment continue. Mr. Settell asked to be demoted from his management position and the employer acquiesced. The employer had not asked Mr. Settell to step down.

After the meeting on December 24, Mr. Settell asked Ms. Harris for approval to use all of his accrued vacation, seven or eight days. Ms. Harris approved the request.

On December 27, 2013, Mr. Settell's wife provided Ms. Harris with a note from Mr. Settell's psychiatrist. The note indicated that Mr. Settell was to continue off work until his next appointment. The note also directed Mr. Settell to contact the doctor to schedule an appointment. The employer acquiesced in the request for time off. Ms. Harris told Mr. Settell's wife that Mr. Settell would be eligible for leave under the Family and Medical Leave Act. The employer prepared FMLA paperwork for Mr. Settell to take to his doctor. Mr. Settell did not return the FMLA paperwork to the employer until the latter half of February 2014, about a month after Mr. Settell had voluntarily quit the employment.

Mr. Settell's next appointment with his psychiatrist was scheduled for January 7, 2014. On that day, Mr. Settell's wife provided Ms. Harris with another letter from Mr. Settell's psychiatrist. The note indicated that Mr. Settell should continue off work for another two-weeks. The employer acquiesced in the request for additional time off.

On January 15, 2014, Mr. Settell delivered a resignation memo to Ms. Harris. The resignation was effective immediately. The employer accepted the resignation. Mr. Settell resigned because he was concerned that he was now vulnerable to complaints from other managers and staff. Mr. Settell did not wish to be subjected to the scrutiny of Ms. Harris or the other key holder. Mr. Settell resigned out of speculative concern that he might be discharged from the employment at some point in the future. At the time Mr. Settell resigned from the employment, the employer continued to have work available for him. Mr. Settell's doctor had not advised Mr. Settell to quit the employment. Mr. Settell subsequently returned to the workplace for the sole purpose of returning his work shirts.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have

informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The evidence in the record indicates that Mr. Settell voluntarily quit the employment due to a non-work related mental health condition. Mr. Settell's voluntary quit was not based on advice from a doctor. In other words, Mr. Settell's doctor did not tell Mr. Settell to quit the employment or recommend that Mr. Settell quit the employment. Mr. Settell made that decision on his own. Mr. Settell has never returned to the employer after recovering from his illness and offered his services to the employer.

The evidence indicates a single incident that aggravated Mr. Settell's mental health condition. That was the matter of the missing \$200.00. It was reasonable for the employer to investigate that matter. It was reasonable for the investigator to press for additional information from Mr. Settell. The weight of the evidence fails to establish that the investigator mistreated Mr. Settell or that the investigator destroyed Mr. Settell's reputation. The employer's decision to let the matter pass suggests just the opposite, that the employer valued Mr. Settell and wanted the employment to continue. The employer's investigation and the employer's decision to monitor Mr. Settell's work in light of a workplace blow up in no way amounted to intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. See 871 IAC 24.26(4). The evidence indicates that it was not necessary for Mr. Settell to leave the employment to avoid serious harm. The evidence indicates that Mr. Settell asked the employer for accommodations that would allow him to continue in the employment and that the employer acquiesced in the request for accommodations. The accommodations that Mr. Settell requested and that employer honored included his request for substantial time off, his decision to surrender his work keys, and his request to step down from his management position.

Mr. Settell's voluntarily quit was without good cause attributable to the employer. Accordingly, Mr. Settell is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Settell.

DECISION:

The Claims Deputy's February 7, 2014, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs