

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HENRY L SETTLES
Claimant

APPEAL NO. 07O-UI-00293-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST ACADEMY LLC
Employer

**OC: 10/06/06 R: 04
Claimant: Appellant (2)**

Section 96-5-1 – Voluntary Quit
Section 96.4-3 – Availability

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 2, 2006, reference 01, representative's decision that denied unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 25, 2007. The claimant participated. The employer participated by Leslie Buehler, Hearing Representative, Howard Bifanue and Tiffany Kahn.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony considered all of the evidence in the record finds: Mr. Settles was employed by Midwest Academy LLC from May 18, 2005 until March 1, 2006, when he voluntarily quit his job for health reasons. The claimant held the position of a youth supervisor/dorm parent, working rotating hours of 56 hours one week and approximately 72 hours the following week. The claimant was often required to work numerous hours beyond an eight-hour shift, and with time Mr. Settles began to experience physical problems due to the length of time that he was required to work and problems associated with medications prescribed by his physician due to long hours.

Mr. Settles followed a reasonable course of action by informing his employer that the long working hours were having a negative effect on his health and by telling the employer that the claimant's physician had advised that he work shorter hours each week. Mr. Settles provided a doctor's note to the employer on January 5, 2006, specifically indicating that the claimant's hours needed to be reduced for medical reasons. The claimant's physician did not specify the reduction that was necessary, however. Mr. Settles continued to have physical problems because of the long hours causing him to miss work and at times to be tardy. Although the claimant had presented a doctor's note, the employer did not change his working hours.

On March 28, 2006, Mr. Biafanue and another counselor met with Mr. Settles and at that time proposed eliminating the overnight requirements of his job position. The claimant was unaware that he could go up the chain of command as there were no other management individuals at the facility where he was assigned. Based upon the two-month delay in receiving any action from the employer regarding the doctor's statement that it was necessary for the claimant's hours to be reduced and the unsatisfactory nature of the reduction offered, Mr. Settles voluntarily quit his position with the organization reasonably concluding that continuing employment would have a detrimental effect on his health and that no other alternatives were available to him within a reasonable period of time.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds based upon the additional evidence available at the time of hearing, that the evidence establishes that the claimant voluntarily quit for good cause attributable to the employer when the claimant terminated the employment relationship because of the verifiable medical condition that was attributable to his employment or to factors and circumstances directly connected with his employment which aggravated the claimant's medical condition.

In this case the evidence establishes that Mr. Settles acted reasonably in informing the employer that due to circumstances, beyond the claimant's control, the long working hours were having a detrimental effect on his health. The claimant further provided verified medical documentation to the employer specifically indicating that the claimant's long working hours were having a negative effect on the claimant's health and needed to be changed by the employer. The evidence establishes that although aware of the doctor's statement confirming the need for a reduction in hours, the employer waited two months before taking any action. Mr. Settles did not realize that he could go above the chain of command as he was unfamiliar with any management other than the individuals he was dealing with at the facility where he was assigned. After waiting two months the employer made an offer that did not eliminate the long consecutive working hours that were determined to be the source of the claimant's physical problems. Based upon the length of time it took the employer to take any action, the claimant was reasonable in determining that further action might be substantially delayed. Work continued to negatively affect his health. He, therefore, quit employment.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury or pregnancy.

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 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.

For the above-stated reasons the administrative law judge finds based upon the additional evidence available at the time of this hearing that the claimant's quitting took place under nondisqualifying conditions.

DECISION:

The decision of the representative dated November 2, 2006, reference 01, is hereby reversed. The claimant left work for reasons attributable to the employer under nondisqualifying conditions and is eligible for unemployment insurance benefits, provided that he meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/css