IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ERIC A NASON
385 N 18TH
HAMILTON IL 62341

MIDWEST ACADEMY LLC
2418 – 340TH ST
KEOKUK IA 52632

Appeal Number: 05A-UI-06388-LT
OC: 05-29-05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Iowa Code §96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 13, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 5, 2005. Claimant did participate. Employer did participate through Sarah Short.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time night watch on the boys' wing through May 27, 2005, when he quit. Claimant was a shift leader on the boys' wing, then demoted to assistant to a member of management. He took a period of Family Medical Leave Act (FMLA) leave for his daughter's illness, and was fired and then rehired and demoted to guard on the boys' wing temporarily during the day. Then employer transferred him to night shift and shortly thereafter told claimant

he could not guard the boys' wing but was assigned to a back door by the gym, which had never been guarded in the past. On May 26 claimant asked his supervisor if the change was indeed temporary but did not receive a direct answer and so took that to mean it was permanent because he was no longer allowed on the boys' wing, where the lunch area and restrooms are located. At this point, after multiple inquiries, employer still owed claimant for 50 hours of vacation pay it made him take instead of the FMLA leave. He also remained unpaid for a $40.00 receipt reimbursement and had to pay for the employer's portion of his single healthcare insurance policy (claimant was responsible for the family portion of the premium) for six weeks prior to the separation. Employer presented no evidence from any member of management with first hand knowledge of the events and issues.

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.

In general, a substantial pay reduction of 25 to 35 percent 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 permanent change to night shift and two demotions without evidence of misconduct, and employer had not paid its share of his insurance premiums for six weeks, had not reimbursed claimant for a business expense, and had not paid him for the vacation time it forced him to take instead of FMLA leave, the multiple changes of the original terms of hire is considered substantial. Claimant has met the notice requirements of Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The June 13, 2005, 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.

dml/kjw