

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID E KERR**  
Claimant

**APPEAL NO. 06A-UI-09532-N**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**MIDWEST ACADEMY LLC**  
Employer

**OC: 08-27-06 R: 12  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a fact-finder's decision dated September 20, 2006, reference 01, which allowed benefits based upon his separation from Midwest Academy, LLC. After due notice was issued a hearing was held in Burlington, Iowa on November 9, 2006. Mr. Kerr appeared and testified. Participating on behalf of the employer was Ms. Sandy Fich, Hearing Representative. Participating as witnesses were Tiffany Kahn, Howard Vaifanua and Mike Holker. Claimant's Exhibits One through Four were received into evidence. Employer's Exhibit A was received into evidence.

**ISSUE:**

At issue in this matter is whether Mr. Kerr was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds that Mr. Kerr was employed by Midwest Academy, LLC. from June 26, 2004 until August 23, 2006 when he voluntarily left employment. Mr. Kerr held the position of Boys Family Representative. He was paid by the hour. His most recent immediate supervisor was Mike Helker.

On August 23, 2006, the claimant was called to a disciplinary meeting to discuss five incidents where the employer believed that the claimant had not followed academy policies or procedures. The intent of the employer was to fully discuss the allegations, to counsel Mr. Kerr and to suspend him for a one-week period to emphasize the importance of following academy rules and procedures. A few minutes into the meeting Mr. Kerr became upset, sat his radio down and left the meeting stating, "I've done all I can do for the academy and I'm leaving now." Although Mr. Vaifanua attempted to call the claimant back to the meeting, the claimant did not respond. At the time the claimant left the meeting he had been informed of his one-week suspension and the dates of it, however, the employer had not completed the meeting and

documentation dealing with the disciplinary suspension had not been signed by Mr. Kerr. Based upon the claimant's statements, his demeanor and his act of leaving the meeting by walking out prior to its conclusion, the employer reasonably concluded the claimant had relinquished his position with the organization. Approximately one week later at the end of his specified suspension, Mr. Kerr reported for work. Mr. Kerr was questioned as to why he was reporting as the employer believed that he had quit. The claimant responded, "Ok...I just wanted to see where I stood with the academy."

Mr. Kerr did not agree with the allegations made in the disciplinary meeting believing that his most recent supervisor had been overly critical. The claimant had received a number of other disciplinary actions while employed by the organization. Four of the five disciplinary actions had been signed by Mr. Kerr in the past and the claimant had not left a disciplinary meeting before its conclusion.

It is the claimant's position that there was no further need to remain in the meeting as he understood that he had been suspended for a specified period of time and knew the date that he was expected to return. It was further the claimant's position that he only made the statement inquiring as to his status upon his return because a youth's parents who he had been in contact with had informed him that the academy had considered that he had quit his job.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant's separation from employment took place in this case when the employer reasonably concluded that Mr. Kerr had relinquished his position with the Midwest Academy by walking off the job during a disciplinary meeting on August 23, 2006. The evidence establishes that Mr. Kerr walked out of the meeting within just a few minutes after the meeting had started and the employer had not had the opportunity to address the majority of the concerns leading to the claimant's one-week suspension from work. At the time of leaving the claimant made statements consistent with an individual who is relinquishing his position with an organization. The claimant stated, "I've done all I can for the academy. And I am leaving now...." In connection with this statement Mr. Kerr sat his radio down and walked out of the meeting. Although one of the two employer representatives at the meeting attempted to summon Mr. Kerr back, he did not return either because he ignored the call or because he did not hear it. Based upon the claimant's statements, his actions and his expressed level of dissatisfaction with the meeting and the basis for it, the employer reasonably concluded that the claimant was leaving his employment. Subsequently, the claimant reported back after the one-week suspension. At that time the claimant was told that the employer considered that he had quit his job and had accepted his resignation. Mr. Kerr did not dispute the statement but instead concurred by stating, "Ok" and adding "I just wanted to check my status with the academy." Although Mr. Kerr maintains that he made the statement after being forewarned that the employer had considered he had quit his job by a third party, the administrative law judge nevertheless finds the claimant's statement in conjunction with his previous conduct corroborates that he had relinquished his position with the organization.

The evidence at the hearing clearly establishes that Mr. Kerr was very upset at being warned and suspended and was in great disagreement about the basis for the disciplinary meeting. In the opinion of the administrative law judge the claimant's action of walking out before all issues had been addressed and the claimant's side aired, in conjunction with his statement, "I've done all I can do for the academy" leads to no other objective conclusion that the claimant was in fact relinquishing his position at that time. In voluntary leaving cases the claimant has the burden of proof in establishing good cause for leaving. Mr. Kerr has not established that his leaving was necessary or compelling. As good cause for leaving, employment has not been established by the claimant the administrative law judge must rule that the claimant left employment for reasons that are disqualifying under the provisions of the Iowa Employment Security Law.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has been paid benefits for which he is not entitled. These benefits must be repaid according to Iowa law.

**DECISION:**

The fact-finder's decision dated September 20, 2006, reference 01, is hereby reversed. Mr. Kerr voluntary left employment under disqualifying conditions. Benefits are withheld until such time as he has worked and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided that he satisfies all other conditions of eligibility. The claimant has been overpaid \$4,676.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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